

2509
No. 11807

United States
Circuit Court of Appeals
For the Ninth Circuit.

Z. E. EAGLESTON,

Appellant,

vs.

FRANK ROWLEY,

Appellee.

Transcript of Record

Upon Appeal from the District Court
for the Territory of Alaska,
Third Division.

FILED

FEB 5 - 1942

PAUL P. O'BRIEN, CLERK

No. 11807

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Adoption of Assignments of Error as Points on Appeal and Designation of Parts of Record to Be Printed.....	187
Amended Complaint	5
Answer	4
Appeal:	
Adoption of Assignments of Error as Points on.....	187
Certificate of Clerk to Transcript of Record on.....	184
Citation on.....	19
Petition for Allowance of.....	14
Assignment of Errors.....	15
Bill of Exceptions.....	25
Witnesses for Plaintiff:	
Brown, Archie L.	
—direct	30
Brown, Norman C.	
—direct	122
—cross	123
Coffin, Dr. Raymond B.	
—direct	71
—cross	75

Witnesses for Plaintiff—(Continued):

Daugherty, Hugh	
—direct	132
Dyer, Albert Henry	
—direct	120, 130
—redirect	138
Feehan, Mrs. Laura M.	
—direct	29
Peterson, George	
—direct	124
Richards, R. S.	
—direct	129
—cross	129
Risley, Robert	
—direct	130, 131
—cross	131
—redirect	137
Romig, Howard G.	
—direct	31
—cross	51
Rowley, Mrs. Frank	
—direct	139
Rowley, Frank	
—direct	107
—cross	118
—redirect	120
Walkowski, Dr. A. S.	
—direct	57
—cross	63
Walsh, Rose	
—direct	127

INDEX

PAGE

Witnesses for Defendant:

Davis, Dr. George G.

—direct 76

—cross 105

—redirect 107

Eagleston, Z. E.

—direct 142

—cross 160

—redirect 161

—recross 162

McGee, L.

—direct 140

Certificate of Clerk to Transcript of Record... 184

Citation on Appeal..... 19

Complaint 2

Counter-Praecipe 171

“Fracture of the Skull”..... 172

Denying Motion for New Trial..... 7

Exceptions 12

Judgment 11

Minute Orders:

July 12, 1947—Extending Time 40 Days
 from Time Heretofore Granted, to Docket
 Record in Circuit Court of Appeals..... 21

May 21, 1947—Granting Additional Time
 in Which to Docket Record on Appeal, 21

INDEX

PAGE

Minute Orders—(Continued):

August 22, 1947—Extending Time Within Which to Docket Cause with Circuit Court of Appeals.....	22
September 23, 1947—Extending Time With- in Which to Docket Cause with Circuit Court of Appeals.....	22
Minute Orders:	
October 20, 1947—Extending Time to File and Docket Case with Circuit Court of Appeals	170
November 21, 1947—Extending Time.....	170
Motion for New Trial.....	7
Names and Addresses of Attorneys.....	1
Order Allowing Appeal and Supersedeas.....	18
Order Dispensing with the Reproduction of Ex- hibits	185
Order Regarding Exhibit No. 128.....	183
Order Settling Bill of Exceptions.....	167
Order with Reference to Printing Transcript..	188
Petition for Allowance of Appeal.....	14
Praeipie for Transcript of Record.....	23
Presentation of Bill of Exceptions.....	20
Proposed Findings of Fact and Conclusions of Law	8
Conclusions of Law.....	10
Findings of Fact.....	8
Supplemental Praeipie for Transcript of Record	169

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

GEORGE B. GRIGSBY,
Attorney at Law,
Anchorage, Alaska,
Attorneys for Z. E. Eagleston,
Defendant and Appellant.

HELLENTHAL AND HELLENTHAL,
Attorneys at Law,
Anchorage, Alaska,
Attorneys for Frank Rowley,
Plaintiff and Appellee. [1*]

*Page numbering appearing at foot of page of original certified Transcript.

In the District Court for the Territory of Alaska,
Third Division
No. A-4239

FRANK ROWLEY,

Plaintiff,

vs.

Z. E. EAGLESTON,

Defendant.

COMPLAINT

Comes now the plaintiff and complains and alleges as follows:

I.

That on the 30th day of July, 1946, at Anchorage, Alaska, the defendant herein unlawfully, without cause or provocation, violently, wrongfully, wantonly, maliciously, grossly, deliberately and outrageously made an assault upon the plaintiff, and did then and there beat, wound and injure, by striking, the said plaintiff, first with his, the defendant's fists, and then by striking said plaintiff one or more blows on the head with an instrument which plaintiff is informed was a heavy iron No. 2 shovel, an instrument or weapon calculated to inflict great bodily injury; that plaintiff thereby was wounded, suffering a depressed compound fracture of his skull, laceration and destruction of his brain, and the deposit therein of a metal, foreign body, and hair, bone and dirt, and is, and for a long time will be sick, and has suffered and still suffers great bodily pain, discomfort and mental suffering from said wounds; that plaintiff was seriously and severely injured and disabled thereby and confined

to Providence Hospital, Anchorage, Alaska, therefrom, for a period of twenty-nine (29) days, and is, at the time of making this complaint, and will be for many months to come, totally disabled and unable to perform any work or services; that in the treatment and necessary care of said wounds he has incurred hospitals bills [2] in the sum of Six Hundred Fifty-seven and 25/100 Dollars (\$657.25), and for physician's services in the sum of Two Thousand Five Hundred Dollars (\$2,500.00); that plaintiff has been injured in the premises in the sum of Thirty Thousand Dollars (\$30,000.00).

Wherefore, Plaintiff demands judgment for Fifty-five Thousand Dollars (\$55,000.00); Thirty Thousand Dollars (\$30,000.00) actual damages and Twenty-five Thousand Dollars (\$25,000.00) exemplary damages and for the costs of this action.

/s/ FRANK ROWLEY.

United States of America,
Territory of Alaska—ss.

Frank Rowley, first being duly sworn, upon his oath, deposes and says: I am the plaintiff in the foregoing complaint; I have read said complaint; know the contents thereof, and the matters therein set forth are true, as I verily believe.

/s/ FRANK ROWLEY.

Subscribed and sworn to before me this 10th day of September, 1946.

[Seal]

/s/ R. J. GROVER,

Notary Public for Alaska.

My Commission Expires 3/25/48.

[Endorsed]: Filed Sept. 11, 1946.

[Title of District Court and Cause.]

ANSWER

Comes now Z. E. Eagleston, the above named defendant, and denies each and all of the allegations contained in plaintiff's Complaint.

DAVIS & RENFREW,
Of Attorneys for Defendant.
By /s/ WILLIAM W. RENFREW.

United States of America,
Territory of Alaska—ss.

Z. E. Eagleston, being first duly sworn, upon his oath, deposes and says:

That he is the defendant named in the within and foregoing Answer, that he has read said Answer, knows the contents thereof and that the same is true as he verily believes.

/s/ Z. E. EAGLESTON.

Subscribed and sworn to before me this 5th day of November, 1946.

/s/ WILLIAM W. RENFREW,
Notary Public in and for the Territory of Alaska.
My Commission Expires 8/1/49.

[Endorsed]: Filed Nov. 5, 1946.

[Title of District Court and Cause.]

AMENDED COMPLAINT

Comes now the plaintiff and complains and alleges as follows:

I.

That on the 30th day of July, 1946, at Anchorage, Alaska, the defendant herein unlawfully, without cause or provocation, violently, wrongfully, wantonly, maliciously, grossly, deliberately and outrageously made an assault upon the plaintiff, and did then and there beat, wound and injure, by striking said plaintiff one or more blows on the head with an instrument which plaintiff is informed was a long-handled garden rake, an instrument or weapon calculated to inflict great bodily injury; that plaintiff thereby was wounded, suffering a depressed compound fracture of his skull, laceration and destruction of his brain, and the deposit therein of a metal, foreign body, and hair, bone and dirt, and is, and for a long time will be sick, and has suffered and still suffers great bodily pain, discomfort and mental suffering from said wounds; that plaintiff was seriously and severely injured and disabled thereby and confined to Providence Hospital, Anchorage, Alaska, therefrom, for a period of twenty-nine (29) days, and is, at the time of making this complaint, and will be for many months to come, totally disabled and unable to perform any work or services; that in the treatment and necessary care of said wounds he has incurred hospital bills in the sum of Six Hundred Fifty-

seven and 25/100 Dollars (\$657.25), and for physician's services in the sum of Two Thousand Five Hundred Dollars (\$2,500.00); that plaintiff has been injured [5] in the premises in the sum of Fifty Thousand Dollars (\$50,000.00).

Wherefore, Plaintiff demands judgment for Seventy-five Thousand Dollars (\$75,000.00), Fifty Thousand Dollars (\$50,000.00) actual damages and Twenty-five Thousand Dollars (\$25,000.00) exemplary damages, and for the costs of this action.

/s/ FRANK ROWLEY.

United States of America,
Territory of Alaska—ss.

Frank Rowley, first being duly sworn, upon his oath, deposes and says: I am the Plaintiff in the foregoing Amended Complaint; I have read said Amended Complaint, know the contents thereof, and the matters therein set forth are true, as I verily believe.

/s/ FRANK ROWLEY.

Subscribed and sworn to before me this 6th day of December, 1946.

[Seal] /s/ JEAN E. McCABE,
Notary Public for Alaska.

My Commission Expires 10/16/50.

Service by receipt of copy of the above Amended Complaint hereby acknowledged this 6th day of December, 1946.

/s/ GEORGE B. GRIGSBY,
Attorney for Defendant.

[Endorsed]: Filed Dec. 6, 1946. [6]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Comes now the defendant in the above entitled action, and moves the court that the judgment and decision of the court heretofore rendered in the above entitled action be set aside and a new trial granted on the following grounds:

I.

Insufficiency of the evidence to justify the judgment and decision.

That the judgment and decision is against law.

/s/ GEORGE B. GRIGSBY,

Attorney for Defendant. [7]

[Title of District Court and Cause.]

Minute Order, December 27, 1946

DENYING MOTION FOR NEW TRIAL

Now at this time the plaintiff not being present in court but represented by John S. Hellenthal of his counsel, the defendant being present in court and represented by his counsel George B. Grigsby and W. N. Cuddy, and the Court being fully and duly advised in the premises,

It Is Ordered that defendant's motion for new trial in cause No. A-4239, entitled Frank Rowley, plaintiff, versus Z. E. Eagleston, defendant, be, and it is hereby denied.

[Endorsed]: Entered Court Journal No. g-13, Page No. 418, Dec. 27, 1946.

[Title of District Court and Cause.]

PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This cause came on regularly for trial on the 9th day of December, 1946, before the above-entitled Court without a jury, a jury trial having been duly waived by the parties, and the firm of Hellenthal & Hellenthal appearing as attorneys for plaintiff, and Warren Cuddy, Esq., and George Grigsby, Esq., for defendant, and from the evidence introduced, and the Court having considered the stipulation of the parties, the Court finds the facts as follows, to-wit:

Findings of Fact

I.

That on the 30th day of July, 1946, at Anchorage, Alaska, the defendant herein unlawfully, without cause or provocation, violently, wrongfully, maliciously and deliberately made an assault upon the plaintiff, and did then and there beat, wound and injure, by striking said plaintiff one or more blows on the head with an instrument which plaintiff was informed and the Court hereby finds was a long-handled garden rake, an instrument calculated to inflict great bodily injury; that plaintiff thereby was wounded, suffering a depressed compound fracture of his skull, laceration and destruction of his brain, and the deposit therein of a metal foreign body, and hair, bone and dirt.

II.

That plaintiff was seriously and severely injured and disabled [9] thereby, suffering great bodily pain, discomfort and mental suffering from said wounds, and confined to Providence Hospital, Anchorage, Alaska, therefrom, for a period of twenty-nine (29) days, and was totally disabled from the date of said injury, or July 30th, 1946, until the time of the trial in this matter; and that said plaintiff will be disabled therefrom for many months to come and unable to perform any work or services, and will suffer pain, discomfort and mental suffering therefrom for many months to come; that in the treatment and necessary care of said wounds, plaintiff incurred hospital bills in the sum of Seven-hundred forty-four and 25/100 Dollars (\$744.25), and bills for physician's services in the sum of Seven-hundred and Fifty Dollars (\$750.00).

III.

That plaintiff has been injured in the premises in the amount of Thirty-seven Thousand Dollars (\$37,000.00), all, in actual or compensatory damages; that there is now due and owing the plaintiff from the said defendant, Z. E. Eagleston, the sum of Thirty-seven Thousand Dollars (\$37,000.00), with interest thereon at the rate of six per cent (6%) per annum from date of judgment until paid.

IV.

That in the ascertainment of the above amount of Thirty-seven thousand Dollars, no account is taken of the loss of profits from the operation of

plaintiff's Mountain View power distribution system, or of the prevention of the operation thereof that may or may not result; that in the fixing of said amount of Thirty-seven Thousand Dollars, pages 430, 431, 432, 456 and 457 of Plaintiff's Exhibit No. 128, or "New York Life Insurance Company, Premium Rates and Policy Values," including Miscellaneous Tables, the "American Experience Table of Mortality," and tables of "Life Annuities" were considered; that in the fixing of said amount of Thirty-seven Thousand Dollars, pages 534 to 540, inclusive, sub-entitled "Fracture of the Skull," of "A Textbook of Clinical Neurology, with an Introduction on the History of Neurology," by Israel S. Wechsler, M. D., Fifth Edition, Revised, 1944, W. B. Saunders Company, were considered.

Conclusions of Law

As a conclusion of law from the foregoing facts, the Court finds that Plaintiff is entitled to judgment in the sum of Thirty-seven Thousand Dollars (\$37,000.00), with interest thereon at the rate of six per cent (6%) per annum from date hereof until paid, in current lawful money of the United States, and costs of suit; and

It is hereby Ordered, Adjudged and Decreed that Judgment be entered accordingly and that counsel for plaintiff submit appropriate judgment in accordance herewith.

Dated this 27th day of December, 1946.

/s/ ANTHONY J. DIMOND,
District Judge.

[Endorsed]: Filed Dec. 27, 1946. [11]

In the District Court for the Territory of Alaska,
Third Division

No. A-4239

FRANK ROWLEY,

Plaintiff,

vs.

Z. E. EAGLESTON,

Defendant.

JUDGMENT

This cause came on regularly for trial on the 9th day of December, 1946, before the above-entitled Court without a jury, a jury trial having been duly waived by parties, and the firm of Hellenthal & Hellenthal appearing as attorneys for plaintiff, and Warren Cuddy, Esq., and George Grigsby, Esq., for defendant, and the Court having heard the testimony and having examined the proofs offered by the respective parties, and the Court having considered the stipulation of the parties, and the Court being fully advised in the premises, and Findings of Fact and Conclusions of Law having been filed herein, and the Court having directed that Judgment be entered in accordance therewith, Now, Therefore, by reason of the law and findings aforesaid,

It Is Hereby Ordered, Adjudged and Decreed:

1. That plaintiff have judgment against the defendant in the sum of Thirty-seven Thousand Dollars (\$37,000.00), with interest thereon at the rate of six per cent (6%) per annum from date hereof until paid;

2. That Plaintiff have judgment against the defendant for his costs herein incurred.

Dated this 27th day of December, 1946.

/s/ ANTHONY J. DIMOND,
District Judge.

[Endorsed]: Filed Dec. 27, 1946.

[Title of District Court and Cause.]

EXCEPTIONS

To the Findings of Fact made and entered herein on the 27th day of December, 1946, the defendant excepts as follows:

To Finding of Fact No. I,—on the ground there was insufficient evidence introduced at the trial on which to base said finding.

Defendant excepts to Finding of Fact No. II,—on the ground that there was insufficient evidence introduced at the trial to support said finding.

Defendant excepts to Finding of Fact No. III, wherein the Court finds that plaintiff has suffered damage in the amount of Thirty-seven Thousand Dollars (\$37,000.00),—on the ground that there is insufficient evidence introduced at the trial of said action to support such finding, and on the ground that such finding was based partially upon improper evidence as detailed in paragraph IV, of said Findings of Fact.

To the Conclusions of Law filed herein on the 27th day of December, 1946, defendant excepts on the ground that said Conclusions of Law wherein and whereby the Court found that plaintiff was entitled to judgment against the defendant in the sum of Thirty-seven Thousand Dollars (\$37,000.00), and certain interest, are based on erroneous Findings of Fact not supported by the evidence in the case. [13]

Defendant excepts to the judgment rendered herein on the 27th day of December, 1946, wherein and whereby the plaintiff was awarded judgment against the defendant in the sum of Thirty-seven Thousand Dollars (\$37,000.00), with certain interest and costs on the ground that said judgment is excessive and not justified by the evidence introduced on the trial of said action.

/s/ GEORGE B. GRIGSBY,
Attorney for Defendant.

The foregoing Exceptions are hereby Allowed this 13th day of March, 1947.

/s/ ANTHONY J. DIMOND,
District Judge.

[Endorsed]: Filed Mar. 13, 1947. [14]

[Title of District Court and Cause.]

PETITION FOR ALLOWANCE OF APPEAL

The above-named defendant, conceiving himself aggrieved by the judgment made and entered on the 27th day of December, 1946, in the above-entitled cause, wherein and whereby judgment was rendered in favor of the plaintiff and against said defendant in the sum of Thirty-Seven Thousand Dollars (\$37,000.00), with interest thereon at the rate of six per cent (6%) per annum from the date of said judgment until paid, and for plaintiff's costs incurred in said action, does hereby appeal from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors which is filed herewith, and said defendant prays that the appeal be allowed; that a citation may issue herein; and that a transcript of the record proceedings and papers in said cause be sent to the said Appellate Court.

Petitioner further prays that a supersedeas may be granted herein pending a final disposition of the cause upon the defendant filing a supersedeas and cost bond in such amount as may be fixed by the order allowing the appeal.

Dated March 13, 1947.

/s/ GEORGE B. GRIGSBY,
Attorney for Defendant.

Service Admitted this 13th day of March, 1947.

/s/ JOHN S. HELLENTHAL,
Attorney for Plaintiff.

[Endorsed]: Filed Mar. 13, 1947. [15]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Now comes the defendant and appellant herein and files the following Assignment of Errors, upon which you will rely in the prosecution of his appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment made and entered herein on the 27th day of December, 1946.

I.

The Court erred in overruling the "Motion for a Change of Venue" on file herein.

II.

The Court erred in admitting in evidence on the part of the plaintiff, "Plaintiff's Exhibit", being a publication called, "New York Life Insurance Company, Premium Rates and Policy Values," including "Miscellaneous Tables" the "American Experience Table of Mortality," and tables of "Life Annuities," the defendant having objected to the admission of said publication to which ruling the defendant excepted and exception was allowed.

III.

The Court erred in its Findings of Fact and Conclusions of Law, as follows:

(a) In finding in Findings of Fact No. I,— "That on the 30th day of July, 1946, at Anchorage, Alaska, the defendant herein unlawfully, without cause of provocation, violently, wrongfully, [16]

maliciously and deliberately made an assault upon the plaintiff, and did then and there beat, wound and injure, by striking said plaintiff one or more blows on the head with an instrument which plaintiff was informed and the Court hereby finds was a long-handled garden rake, an instrument calculated to inflict great bodily injury; that plaintiff thereby was wounded, suffering a depressed compound fracture of his skull, laceration and destruction of his brain, and the deposit therein of a metal foreign body, and hair, bone and dirt."

(b) In finding in Findings of Fact No. II,—
"That plaintiff was seriously and severely injured and disabled thereby, suffering great bodily pain, discomfort and mental suffering from said wounds, and confined to Providence Hospital, Anchorage, Alaska, therefrom, for a period of twenty-nine (29) days, and was totally disabled from the date of said injury, or July 30th, 1946, until the time of the trial in this matter; and that said plaintiff will be disabled therefrom for many months to come and unable to perform any work or services, and will suffer pain, discomfort and mental suffering therefrom for many months to come; that in the treatment and necessary care of said wounds, plaintiff incurred hospital bills in the sum of Seven Hundred Forty-four and 25/100 Dollars (\$744.25), and bills for physician's services in the sum of Seven Hundred Fifty Dollars (\$750.00)."

(c) In finding in Findings of Fact No. III,—
"That plaintiff has been injured in the premises in the amount of Thirty-seven Thousand Dollars (\$37,-

000.00), all, in actual or compensatory damages; that there is now due and owing the plaintiff from the said defendant, Z. E. Eagleston, the sum of Thirty-seven Thousand Dollars (\$37,000.00), with interest thereon at the rate of six per cent per annum from date of judgment until paid." [17]

And that the Court erred in forming its Conclusions of Law, as follows: "As a conclusion of law from the foregoing facts, the Court finds that Plaintiff is entitled to Judgment in the sum of Thirty-seven Thousand Dollars (\$37,000.00), with interest thereon at the rate of six per cent (6%) per annum from date hereof until paid, in current lawful money of the United States, and costs of suit; and

"It is hereby Ordered, Adjudged and Decreed that Judgment be entered accordingly and that counsel for plaintiff submit appropriate judgment in accordance herewith:"

And to each of which said Findings of Fact and Conclusions of Law the defendant excepted and said exceptions allowed.

IV.

That the Court erred in rendering judgment in favor of the plaintiff and against the defendant in the sum of Thirty-seven Thousand Dollars (\$37,000.00), and certain interest and costs. The Court's error in this regard is based upon all the errors assigned, to-wit—Assignments of Errors numbers I, II, III, and IV, inclusive, and on the ground that said judgment is excessive and not justified by the evidence introduced in the trial of said cause, to which judgment the defendant excepted and exception was allowed.

Wherefore, defendant and appellant prays that the judgment in the above-entitled cause be reversed and the cause remanded with instructions to the Trial Court as to further proceedings therein, and for such other and further relief as may be just in the premises.

Dated this 13th day of March, 1947.

Service admitted this 13th day of March, 1947.

/s/ GEORGE B. GRIGSBY,
Attorney for Defendant and
Appellant.

.....
Attorney for Plaintiff.

[Endorsed]: Filed Mar. 13, 1947. [18]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL AND
SUPERSEDEAS

The petition of Z. E. Eagleston, defendant, in the above-entitled cause for an appeal from the final judgment rendered therein, is hereby granted, and the appeal is allowed, and upon the petitioner filing a bond in the sum of Forty Thousand Dollars (\$40,000.00), with sufficient sureties and conditioned as required by law, the same shall operate as a supersedeas of the judgment made and entered in the above cause, and shall suspend and stay all further

proceedings in this Court until the termination of said appeal by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: March 13, 1947.

/s/ ANTHONY J. DIMOND,
District Judge.

Service admitted this 13th day of March, 1947.

.....
Attorney for Plaintiff.

[Endorsed]: Filed Mar. 13, 1947.

[Title of District Court and Cause.]

CITATION ON APPEAL

To the plaintiff, Frank Rowley, and to his attorneys, Hellenthal and Hellenthal:

You, and each of you, are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, in the State of California, thirty (30) days from the date of the within Citation, pursuant to the Order Allowing Appeal on file in the Clerk's office of the District Court for the Territory of Alaska, Third Division, and in that certain action pending in said District Court entitled, Frank Rowley, plaintiff, vs. Z. E. Eagleston, defendant, being No. A-4239, in the files of said District Court, and wherein Z. E. Eagleston is appellant, and you are

appellee, to show cause, if any there be, why the judgment rendered against Z. E. Eagleston should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witnessed by the Honorable Anthony J. Dimond, Judge of the District Court for the Territory of Alaska, Third Division, this 13th day of March, 1947.

/s/ ANTHONY J. DIMOND,
Judge of the District Court for the Territory of
Alaska, Third Division.

Service admitted this 13th day of March, 1947.

/s/ JOHN S. HELLENTHAL,
Attorney for Plaintiff.

[Endorsed]: Filed Mar. 13, 1947. [20]

[Title of District Court and Cause.]

PRESENTATION OF BILL OF
EXCEPTIONS

Now at this time, George B. Grigsby, of counsel for defendant in the cause of Frank Rowley, plaintiff, versus Z. E. Eagleston, defendant, cause No. A-4239, announced to the Court that he had served and filed the defendant's proposed bill of exceptions to be used on appeal of said cause heretofore taken, and now withdrew the proposed bill of exceptions from the Clerk's file and presented the same to the Judge in open court, praying that the same be allowed and settled.

Entered Court Journal No. g-14, Page No. 263,
May 13, 1947. [21]

[Title of District Court and Cause.]

Minute Order, May 21, 1947

GRANTING ADDITIONAL TIME IN WHICH
TO DOCKET RECORD ON APPEAL

Now at this time, on oral motion of George B. Grigsby, counsel for the defendant,

It Is Ordered that defendant be, and he is hereby, granted an extension in time to July 15, 1947, in which to docket the record on appeal in cause No. A-4239, entitled Frank Rowley, plaintiff, versus Z. E. Eagleston, defendant, with the Circuit Court of Appeals.

Entered Court Journal No. g-14, Page No. 293, May 21, 1947. [22]

[Title of District Court and Cause.]

Minute Order, July 12, 1947

EXTENDING TIME 40 DAYS FROM TIME
HERETOFORE GRANTED, TO DOCKET
RECORD IN CIRCUIT COURT OF AP-
PEALS FOR NINTH CIRCUIT

Now at this time, on oral motion of George B. Grigsby, counsel for the defendant,

It Is Ordered that defendant be, and he is hereby granted an extension of 40 days from time heretofore granted, to docket the record on appeal in cause No. A-4239, entitled Frank Rowley, plaintiff, versus Z. E. Eagleston, defendant, with the Circuit Court of Appeals for the 9th Circuit.

Entered Court Journal No. g-14, Page No. 318, July 12, 1947. [23]

[Title of District Court and Cause.]

Minute Order, August 22, 1947

EXTENDING TIME WITHIN WHICH TO
DOCKET CAUSE WITH CIRCUIT COURT
OF APPEALS

Now at this time upon motion of George B. Grigsby, counsel for defendant,

It Is Ordered that the time within which appellant in cause No. A-4239, entitled Frank Rowley, plaintiff, versus Z. E. Eagleston, defendant, may docket cause with Circuit Court of Appeals, be, and it is hereby extended forty days from August 25, 1947, and plaintiff required to file his proposed amendments to the bill of exceptions within ten days.

Entered Court Journal No. g-15, Page No. 60, August 22, 1947. [24]

[Title of District Court and Cause.]

Minute Order, September 23, 1947

EXTENDING TIME WITHIN WHICH TO
DOCKET CAUSE WITH CIRCUIT COURT
OF APPEALS

Now at this time upon motion of George B. Grigsby, counsel for defendant, and with John S. Hellenthal, of counsel for plaintiff not objecting thereto,

It Is Ordered that defendant be, and he hereby is, granted extension of time up to and including October 26, 1947, within which to docket cause No. A-4239, entitled Frank Rowley, plaintiff, versus Z. E. Eagleston, defendant, with the Ninth Circuit Court of Appeals.

Entered Court Journal No. g-15, Page No. 127, September 23, 1947. [25]

[Title of District Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the District Court, Third Division, Alaska:

You are hereby requested to make transcript of record in the above-entitled action to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal taken in said cause, and to include in such transcript the following papers of record in said cause:

1. Complaint.
2. Answer.
3. Amended complaint.
4. Motion for New Trial.
5. Minute Order, Dec. 27th, 1946, denying New Trial.
6. Findings of Fact and Conclusions of Law.
7. Judgment.

8. Exceptions to Findings of Fact, Conclusions of Law and Judgment.
9. Petition for Allowance of Appeal.
10. Assignments of Error.
11. Order allowing Appeal and Supersedeas.
12. Citation.
13. Minute Order of May 13, 1947, Presentation of Bill of Exceptions.
14. Minute Order, May 21st, 1947, extending time to docket Record on Appeal. [26]
15. Minute Order July 12, 1947, extending time to docket Record on Appeal.
16. Minute Order Aug. 22, 1947, extending time to docket Record on Appeal.
17. Minute Order Sept. 23, 1947, extending time to docket Record on Appeal.
18. Bill of Exceptions.
19. This Praecipe.

/s/ GEORGE B. GRIGSBY,
Attorney for Defendant and
Appellant.

Service admitted this 14th day of October, 1947.

/s/ JOHN S. HELLENTHAL,
Attorney for Plaintiff and
Appellee.

[Endorsed]: Filed Oct. 1, 1947. [27]

[Title of District Court and Cause.]

BILL OF EXCEPTIONS

Be It Remembered:

This cause came on regularly for trial at ten o'clock a.m., Monday, December 9, 1946, before the above-entitled Court at Anchorage, Alaska, and the following proceedings were had:

George B. Grigsby, attorney for the defendant, presented a motion supported by affidavits for a change of venue, which motion was overruled by the Court, to which ruling defendant excepted and exception was allowed.

And, thereupon, George B. Grigsby objected to going to trial before the present jury panel as supplemented by a special venire returnable at 2:00 o'clock p.m. of said day, on the grounds stated in the motion for a change of venue, and on the ground that the special venire was composed of residents of Anchorage and vicinity, and on the ground that in drawing the special venire the names of persons living at a distance from Anchorage were rejected and thrown out as being residents of places too remote to be conveniently subpoenaed, which objection was overruled, to which ruling defendant excepted and the exception was allowed. [28]

And George B. Grigsby, attorney for the defendant, then called the Court's attention to a motion for an Order of Examination, dated and served on attorneys for plaintiff on 7 December, 1946, and filed with the Court 9 December, 1946, which mo-

tion was made for the purpose of having the plaintiff submit to an examination by certain physicians to be appointed by the Court. Whereupon, [29] the plaintiff's attorneys consented to having the plaintiff submit to an examination before physicians to be appointed by the Court. Whereupon the Court appointed the following physicians to make said examination: Doctors A. S. Walkowski, R. B. Coffin and George G. Davis.

And, thereupon the following proceedings were had:

Mr. Grigsby: Now, if the Court please, counsel for the defendant offers to stipulate that this case be tried before the Court; and, further, that the Court, having heard the evidence in the criminal case, that no evidence need be submitted as far as we are concerned except on the question of damages.

Mr. Hellenthal: I wasn't quite clear about that. You say no evidence except evidence of damages?

Mr. Grigsby: On the question of damages, yes.

Mr. Hellenthal: I would like time to consult with my client before entering into any such stipulation.

Court: Well, let me finish this order. Order for physical examination has been signed and may be entered.

Court will stand in recess until 11 o'clock.

(Whereupon recess was had at 10:50 o'clock a.m.)

After Recess

(Jurors on panel were excused until 2 o'clock p.m.)

(Twenty additional names were drawn for the regular panel.)

(Recess was then had until 2 o'clock p.m.)

Afternoon Session

The Court: Before proceeding further, I inquire of counsel whether anything further has been done along the lines indicated when Court recessed this morning?

Mr. Hellenthal: There is a matter that counsel for the plaintiff would like to take up before the Court in connection with that same subject. I believe it should be taken up in the absence of the jurors.

The Court: Well, we have so many jurors here that it is obviously impossible [30] to find space for them elsewhere, and so I suggest that counsel and the parties, if they desire, come in chambers and the reporter will be in attendance and we can do everything there that we could do in open court.

Ladies and Gentlemen: You who have been drawn for the jury—will you kindly remain here in the court room until the return of the Court since it is desired that the Court discuss, out of the hearing of the jurors, a matter concerning the case which has been set for trial today.

The Court will stand in recess for conference in chambers.

(Following conference in chambers, the following proceedings were had in open court:)

The Court: In the case of Frank Rowley, plaintiff, vs. Z. E. Eagleston, defendant, No. A-4239, it is my understanding that counsel for the respective parties have stipulated, and they do now stipulate in open court, to waive trial of the case by jury, and they do consent and request that the case be tried by the Court without a jury; and that the Court shall consider as being in evidence and before the Court all of the testimony and evidence given in the trial of the Criminal case of United States of America vs. Z. E. Eagleston, which was tried before a jury and in which a verdict was rendered some days ago; and that either of the parties may adduce other evidence—additional evidence—bearing upon the physical condition of Mr. Rowley, or relating to damages, as well as evidence upon any other feature of the case which counsel for either party may think was not adequately covered by testimony and evidence given in the criminal case.

Does counsel for the plaintiff so stipulate?

Mr. Hellenthal: We do, your Honor.

The Court: Does counsel for defendant so stipulate?

Mr. Grigsby: We do, your Honor.

The Court: Very well, the case will be tried in that fashion. And the trial will go on—I understand this is agreeable to the parties—at 10 o'clock tomorrow morning. Although one of the parties had wished to go on this afternoon, I believe to go

forward with the proof this afternoon—I believe it would be better, in view of the provisions made for the physical examination of the plaintiff under an order entered by consent and signed this morning, that it would be better to defer the taking of all testimony [32] until tomorrow morning at 10 o'clock.

Therefore, an order will now be made to set down the case for trial for the taking of additional evidence tomorrow morning at 10 o'clock.

And, thereafter, on Tuesday, December 10th, 1946, the following proceedings were had:

MRS. LAURA M. FEEHAN

a witness called on behalf of plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Hellenthal:

My name is Mrs. Laura M. Feehan. My occupation is X-ray work and laboratory work in the Providence Hospital here. I was engaged in such work on the 30th of July, 1946; have been so engaged at the Providence Hospital since that date. I took X-rays of Frank Rowley at the request of Dr. Romig. I have the X-rays that I took of Frank Rowley. Until the moment I came to this courtroom they were in our files at the Providence Hospital. I would judge there are a dozen of them. They are the same X-rays that were given to a Board of Doctors yesterday for their use in con-

(Testimony of Mrs. Laura M. Feehan.)

sidering the condition of Mr. Rowley. The X-ray photographs were offered and admitted in evidence without objection, and being fourteen (14) in number, were marked "Plaintiff's Exhibits numbers 100 to 113, inclusive.

And thereupon,

ARCHIE L. BROWN

a witness called on behalf of plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Hellenthal:

My name is Archie L. Brown. On July 30, 1946, I was Acting Identification Officer of the Anchorage Police Department. On that day I took some pictures of Mr. Rowley while he was undergoing an operation at Providence Hospital. I have those pictures with me. Those are the pictures I took of Mr. Rowley on the 30th day of July at Providence Hospital. They truly represent the scenes that I attempted to photograph on that day. These photographs were taken in the presence of Doctor Romig, Dr. Flora, and the nurse, Miss Sally Hart, and one other nurse whose name I do not know. Photographs described admitted in evidence without objection, and marked "Plaintiff's Exhibits Nos. 114-123, inclusive.

And thereupon,

HOWARD G. ROMIG

a witness called in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Hellenthal:

My name is Howard Glenmore Romig; I am a physician and surgeon; I went to Stanford Medical School, and finished in 1934; I studied two years in the San Francisco County Hospital, the last year of which I was house officer and surgeon; have practiced in Anchorage since 1936, except for three (3) years which I spent in the Navy; I do not have any specialties; my two years in post graduate work at Stanford University and San Francisco were more in surgery than anything else. [34]

I know Frank Rowley. On the 30th of July, 1946, I attended Mr. Rowley for a head injury; subsequently I have watched him. The last date I examined him was yesterday, in part, and at Providence Hospital, and in the presence of three other doctors. On July 30th of this year he was suffering from a compound, comminuted, depressed fracture of the skull; a compound means that the wound was communicating to the outside; comminuted means there were a multitude of fragments; depressed means these fragments were shoved down into the brain substance. In addition to treating him for the fractures I have outlined I have treated him for laceration of the brain, laceration of the dura, hemorrhage, shock, laceration of the scalp.

(Testimony of Howard G. Romig.)

On the morning of the 30th of July, 1946, at 10:20 a.m., I took Mr. Rowley as a patient from Dr. Davis who had been called in attendance by someone else. Before going to surgery Mr. Rowley was given tetanus antitoxin, gangrene antitoxin; was started on penicillin and sulpha; was brought out of a small degree of shock and prepared for surgery. About one o'clock—one-thirty—he was taken to the operating room where I extended the laceration into an incision reaching from the front of his scalp to the mid-back portion of the scalp. I also extended it laterally sufficient to allow me to operate on the fracture I have described before—the brain tissue that was injured as I have described before.

(Witness handed a photograph, being Plaintiff's Exhibit No. 8, in the case of U. S. vs. Eagleston, No. 1986-Cr., and witness exhibiting photograph to the Court and continuing:)

This laceration between the tips of these two instruments was there when I first was called to attend Mr. Rowley. This laceration existed at the time I was called [35] to attend the patient. In order to operate on the underlying damaged bone and brain I had to extend the incision forward, backward and laterally.

The Court: Which is the original?

Witness: Between the tips of the instrument here. Having exposed the fractured skull, and the herniated, destroyed brain tissue which exuded from

(Testimony of Howard G. Romig.)

the wound, I removed considerable number of small fragments of bone from Mr. Rowley's brain. Adhering to these fragments of bone was hair in almost every instance. I also removed a total of about two-thirds of one ounce by volume of destroyed brain tissue. I controlled the bleeding by tying two large veins. Those veins were underneath the dura and lying next to the brain. I cleaned the wound by irrigating it, sutured the dura over the defect in the brain. The dura may be called the tough covering—tough tissue covering to the outer portion of the brain. I replaced then, on top of the dura, as many bone fragments as I was able to clean and make acceptable for use. A good number of the bone fragments had to be thrown away, that is to say, they could not be replaced in the hope that they would grow over the defect in the man's skull. A great many of these fragments lay in the brain substance itself—completely through the dura and in the brain substance. The deepest fragment removed from his brain was one and one-quarter inch below the outer table of bone—one and one-quarter inch below the outside of the skull. These fragments were located in the frontal parietal area. I stitched the dura and covered the dura with bone, then I sutured the scalp, and then took the man to his room. X-rays had been ordered before the operation by either Dr. Davis or Dr. Coffin, I do not know which. They were at hand and I used them. The two exhibits, Plaintiff's [36] Exhibits

(Testimony of Howard G. Romig.)

No. 12 and 13 in the said case of United States vs. Eagleston, are the X-rays that were present on the morning of the 30th when I made this operation. I can analyze those X-rays and show the Court and the parties.

The Court: Do you want that machine?

Witness: Could you bring it up here and I will show it to the Judge?

The Court: Better put it up on the desk here. If counsel desire to stand behind while the doctor is explaining they may do so.

Witness (continuing): This is a P.A. view. The E-rays passed through the man's back of his skull to the forward part of his skull and it shows here this multitude of fragments in this particular area of the skull, and it also shows the thin fracture line running from his frontal area, just above his nose, up to this comminuted area and then backwards to the vortex of his skull—so far as this particular view will show the fracture running.

The Court: How can you tell whether that thin fracture is in the front or back?

Witness: In this particular instance the forward part of his skull rested near the X-ray and that is sufficient to throw that fracture on to the film, whereas others from the back of his skull did not show up. On a subsequent date we took other X-rays and did actually show that this same fracture had run completely back into the back of his skull.

(Testimony of Howard G. Romig.)

Illustrating on the exterior of my own head, this fracture runs from Mr. Rowley's skull right at the point here (pointing) where my nose is, upward to this area here where there was a group of comminuted depressed fractures, [37] ran back to the top of the skull and then crossed over to the left occipital area. This left occipital area is not evident on this film. I also saw it running there at the time of the operation.

This fracture that runs forward connects with the frontal sinus and connects with one of these air spaces that connects with the man's nose.

The Court: That is Exhibit No. 13.

Witness (continuing): That X-ray Exhibit No. 13 in the prior proceeding was taken on the 30th of July, 1946, some time before 10:20 a.m. I am speaking for both Exhibits 12 and 13. That is shown on the exhibit. Now, this view is taken with the X-rays passing from side to side and it shows this multitude of fractures actually down in the brain substance itself. This is a fragment of bone that is down in the brain substance. This is presumed to be the one I removed which was an inch and a quarter from the top of the skull.

The Court: I see a little mark—

Witness: That is the part of the fracture, and it—These two X-rays I had prior to performing the operation. There were no others available for my use at that time.

(Testimony of Howard G. Romig.)

(Witness is handed a number of photographs heretofore introduced in evidence, and continues as follows:)

Exhibit No. 119: This shows the hands of my assistant here exposing the comminuted fractured area in Mr. Rowley's skull. The black tissue here into which has been inserted a hemostat is brain tissue and blood. In this area there is no bone. These small fragments of bone have been removed. This large fragment and this fragment here were elevated and replaced; and in this area several of the small fragments were taken and cleaned up and placed there with the hope that they would grow and cover Mr. Rowley's brain. [38]

The Court: Is the brain tissue actually black in color or gray?

Witness: No, it is largely gray and white.

The Court: But it shows up black in the picture?

Witness: Yes, because on account of the presence of blood. Now, 115 is a similar exposure without the instrument being inserted in the brain tissue. 114 is likewise a similar exposure. 120 is a profile of Dr. Flora, and a front view of me for identification purposes at the operation, and this is a fragment of bone visible in the fractured area. This is a working picture that does not show very much. That is Exhibit 121, Dr. Flora and myself. 122 shows no detail of essential value. 123 shows the beginning of the closure of the wound. 118 shows the residual bone and fragments that were

(Testimony of Howard G. Romig.)

not placed back in the skull. These are fragments of bone and pieces of brain tissue.

The Court: What are the larger articles?

Witness: These are sponges of blood and brain tissue adhering to them. 117 is of no practical value. 116 shows my assistant with a piece of bone in his instrument that we were just removing from the brain.

Following the operation Mr. Rowley was given penicillin and sulpha medications for the purpose of preventing infection. In the course of his convalescence, in the first three days he was noticed to be blowing blood from his nose and excessive amount of nasal secretions. These undoubtedly reached his nostril through the sinus which was involved in the fracture. Subsequent X-rays in the course of his illness show an area of decreased density between his brain and the skull which is air, indicating that the air comes from the sinus; in other words, that the fracture communicates with an air space. [39]

The Court: Just a minute. You spoke of air between brain and skull. Between what part of his skull?

Witness: The fractured area and the tissue beneath it.

(Witness is handed Plaintiff's Exhibits 108 and 109.)

Witness (continuing): These are the 13th of August, 1946—this shows the comminuted area to

(Testimony of Howard G. Romig.)

be now moderately devoid of these fragments and in some measure covered over with fragments—for example, these two (pointing): The dark area represents no bone, that means there is no skull over the man's brain in this area. It is an area between the size of a quarter and the size of a 50-cent piece. That little white thing in the middle is a piece of bone placed there in the hope that it would grow on across. By area the size of a 25-cent or 50-cent piece, I mean the total of the uncovered area of brain.

Q. Will you trace the fracture on this photograph as of the 13th?

A. Yes (tracing)—then it disappears in this area because you don't see—you can see a little decreased density right here. By decreased density I mean there is relatively less brain tissue there—enough so it doesn't cast a shadow. That is here, here and here, and there wouldn't—certainly would not be a vacuum there, or the brain tissue would lie against the skull. Therefore, this decreased density can be nothing more than air, and air had to enter the cranial vault through the sinuses because the skin is closed so tight it could not get through there. The reason for mentioning air, communicating with the sinuses also indicates the possibility of infection. The sinus communicates with the nose. [40]

In the course of Mr. Rowley's recovery, in the first few days he complained of numbness and tingling in his left arm. Examination showed no positive findings so far as the arm was concerned. How-

(Testimony of Howard G. Romig.)

ever, considering the fact that he was injured on the right side of his brain, it was assumed that this was some disturbance as a result therefrom. His course in the hospital was very satisfactory—fever was never high and subsided in a few days.

The Court: Before passing that one point: What is the explanation of a numbness or tingling in his left arm when the right side of the brain was injured?

A. It is common knowledge that injuries to the right side of a man's brain will produce symptoms to the *right* side of his body. For instance: A stroke in the right side of the brain commonly has the left side of the body paralyzed.

Witness: I have taken X-rays regularly since the injury, and after the 13th of August.

(Witness is handed Exhibit 105 and asked to place it in the device and analyze it.)

Witness (continuing): This is a lateral view of Mr. Rowley's brain. It shows the presence of two fragments beneath his skull. Now, I have never been sure whether these fragments were left in his brain or whether that is on the other side of the mid-line and appears to lie in the brain tissue. Decreased density indicates the presence of air (witness indicates by pointing to place on photograph).

The Court: Could not that appearance come from the absence of bone?

Witness: Yes, sir.

Witness (continuing): This is Exhibit 113. It is a [41] stereoscopic film.

(Testimony of Howard G. Romig.)

These films are similar in that they are taken at a specified distance much the same as you would look at something with both your eyes, then by putting them in the stereoscope device it gives you a sense of depth. And in this fracture line seems to run into the posterior aspect of the skull—the left posterior part of the skull.

The references I have just made account for 112 and 113. Here are stereos of his skull—12th of September is a lateral film of the skull, and the controversial piece of bone that may or may not be in the brain substance as exhibited here. Altogether, this indicates a rather alignment of fragments. That is Exhibit 1110. No air is seen in this.

On 9/12/46, Exhibit 111, this is taken from the back and this shows the—it shows the defects still in the man's skull and fragments in rather satisfactory position. This X-ray only shows the X-ray from the front from the top of his nose to the top of his head. It can be traced in this manner—down here (indicating). Those little pieces of floating bone in there have not materially changed since the X-ray that was taken on the 11th of August. There is nothing else noteworthy about this particular X-ray.

I would like to look at my record for just a moment. On the 21st of August Mr. Rowley went home, according to my notes. At that time I considered his progress in the hospital highly satisfactory as was also the judgment passed by one or two other doctors who had seen him once or twice in

(Testimony of Howard G. Romig.)

my absence. However, I noticed that Mr. Rowley's mental capacities have been dulled, and this has become increasingly more apparent in the past few weeks. At the present time Mr. Rowley complains of dizziness, [42] headache, ringing in his ears, a sensation of staggering or giddiness, inability to concentrate without a headache, inability to function mathematically almost totally at times, increased fatigability as far as work is concerned.

I took some more X-rays on the 11th of October. Analyzing these X-rays in this device, Nos. 102 and 103 are stereomats taken for the purpose of showing the occipital or posterior parietal fracture; that means the fracture in the back part of his skull. There is nothing of importance in those particular stereos.

Q. Will you trace the fracture?

A. Yes (tracing): In this position here, around over to here; it disappears here. This is the very base of his skull there; that is the back; he was laying on his back when that was taken, face up; skull was on the plate. This is 104. This is a lateral picture of Mr. Rowley's skull taken on the 11th of October, and without any doubt at all, and considering the fact that there is absence of bone in some part, there is evidence of air in this man's cranial vault. In other words, on that date his fracture area had communicated sufficiently with the sinus to show the presence of air.

Q. Will you show what demonstrates that?

(Testimony of Howard G. Romig.)

A. In this area here (indicating) and very nicely depressing the brain substance around to here. All that area of decreased density is too much to be accounted for by the defect in the bone itself.

Witness (continuing): Tissue casts a shadow on an X-ray film which is gray. The absence of tissue, such as here, is dark. In other words, this is the brain and bone here—is dense—and it is, therefore, gray on the film. There is nothing out here and it is black. This area of decreased density is air. It is not as dense at this part [43] of the film, nor yet as decreased as this part of the film where there is nothing.

Q. And, therefore, you conclude that that is air?

A. This film in particular, in case of controversy, I think it should be shown to other doctors. That is 104; 107 is the stereo on the 11th of October. This is a P.A. stereo, meaning to say that the X-rays passed from the back of the man's skull through to the front of his skull. The purpose of this was to show the extent of the fracture forward in the man's skull. Inasmuch as we cannot see these stereoscopically, it does, however, show the fracture communicating in the sinus, and if we had a stereoscopic viewing box here it would show this more clearly. That is 107 and 106.

There are some more X-rays taken as late as yesterday, including those two you have just given me; these represent each and every X-ray taken of Mr. Rowley. The films that I have seen today, to the best of my knowledge, represent all the films

(Testimony of Howard G. Romig.)

taken in this case. Those were both taken yesterday morning—they are numbers 100 and 101. The first film in the box is a lateral view of the man's skull; this is 101, and it shows two of the fragments depressed slightly below the general level of the internal table of bone. We refer to a skull as having two tables—an outer dense piece of bone and inner dense piece of bone. These fragments are below the inner table of bone. In other words, they are below this level of the skull, and being in this particular position and considering the fact that there is much scar tissue over the brain, they could be actually the cause in part of Mr. Rowley's present symptoms. Is that clear? These two pieces of bone, plus the scar tissue in his brain, are certainly a part of his present symptoms. The point in bringing this out is that [44] this may some time have to be rectified surgically. This 101, and it is dated 12/9/46.

Q. Will you trace that fracture again on this, please?

A. Here is part of it, and the fracture line is not visible here, excepting that this fragment of bone is depressed, and this piece of bone is below the internal table. That is on Exhibit 101. To prove that this one fragment is depressed in this view, the P.A.—

The Court: This is 102?

A. 100. To prove that one fracture without any question is depressed you can see where the fragment and the rest of the skull overlap one another. Standing back you can see that this is a little

(Testimony of Howard G. Romig.)

lighter. In other words, that small fragment—that small fragment is below the general level of his skull.

Many elements make up—help you arrive at a conclusion or a diagnosis. The first is the unsolicited symptoms given you by the patient; the second are your findings, and one of the most important things is the history of the case. In this particular case the history at this point consists of all I know about it, starting at the 30th of July and to the present date. Those would be my findings.

At the present moment I cannot recall that I have omitted anything. I wish to point out, however, that the man's injury was in the frontal part of his head and that he had a severe brain injury, and that the outcome, of course, is to be measured according to the knowledge that it was a severe injury to that part of his brain—the frontal part of his brain. I do not believe I have omitted any significant symptoms.

The prognosis is to be called the outlook in Mr. Rowley's case, what he can expect and how comfortable he [45] will be, or how uncomfortable he will be. My prognosis, in addition to being based upon my diagnosis, is in some measure based upon my recent study of Wechsler's Textbook of Neurology. I do not know who publishes that textbook. The book you hand me is a 1944 edition of Wechsler's Textbook of Neurology, published by W. B. Saunders & Co. My prognosis is based also on Attorneys Textbook of Medicine by Gray—1940 edi-

(Testimony of Howard G. Romig.)

tion, published by Matthew Bender and Company. Wechsler is an outstanding authority, and the other as I understand it is a medical textbook for attorneys. I have not been acquainted with it until a late date, but Wechsler I have been acquainted with for many years. I think this attorney's textbook of medicine came from the Judge's chambers. I read on the inner part of the cover, "Property of the United States for use of the District Judge." Based upon my diagnosis and study of the text you have mentioned, and my experience as a surgeon and physician, my prognosis in this particular case of Mr. Rowley is unfavorable. I mean that Mr. Rowley may have no end to his headaches, to his dizziness, to the ringing in his ears, to his nervousness, to his fatigability, and his nightmares and insomnia. He may have no end to those. They may, in fact, become worse. Not only could he have those complications, but epilepsy, for example, could ensue. Wechsler's Textbook places that at five and ten per cent up to thirty in severe injuries. By that I mean that the outcome of epilepsy depends in large measure upon the amount of brain tissue destroyed and the proximity of the damaged brain tissue to the motor centers. By Wechsler placing it at 10 to 30 per cent, they estimate that a man with a severe head injury has about a 10% chance of [46] becoming a confirmed epileptic, and in some types of injury, but not specifically the one involved, it is even known to be higher. Not only could he have that as a complication, but he could have, even at

(Testimony of Howard G. Romig.)

a late date, meningitis—inasmuch as it communicates with the sinus, he could even have a brain abscess. Mr. Rowley's condition is no better, in fact, since he left the hospital. It is also possible that Mr. Rowley could go through the remainder of his life without any epilepsy. When I speak of prognosis of epilepsy, and these various disorders I have described, I do not mean it is going to happen, but in my opinion Mr. Rowley will never be free of some measure of his present discomfort. Those discomforts that he suffers now are headaches, dizziness, ringing in the ears, nervousness, fatigability, sleeplessness, and he has the one positive finding of diminished cerebation. Mr. Rowley is not mentally as capable now as I have known him before. I would say I have known him eight years.

(Witness reads from Wechsler, page 538 of the 1944 edition, as follows:)

“Prognosis.—The prognosis varies with the severity and location of the injury to the brain. Immediate or early death occurs in a great many cases. The death rate is high in lesions in the neighborhood of the medulla and frontal lobes. Fracture through the frontal sinus may result in late meningitis. Generally, fractures of the base are more dangerous than those of the vault. Depressed and comminuted fractures offer a worse prognosis than simple fissured ones. Compound fractures carry the possibility of infection and subsequent meningitis or abscess. Loss of deep re-

(Testimony of Howard G. Romig.)

flexes, drop in blood pressure, and fixed, dilated pupils are of ominous significance. In general, fractures of the skull are not only [47] immediately serious, but may leave behind grave and permanent sequels. A great many patients never recover at all. Complete recovery and return to former occupations or previous intellectual vigor is not at all rare. However, recovery may take months or even years, and no definite prognosis can be ventured before all possibility of the occurrence of late complications has passed. Permanent deafness, facial paralysis, ocular palsy, and even optic atrophy may remain after fracture of the skull."

The lesion in this injury occurred in the frontal area, rather close in the motor cortex. That is back close to the mid portion of the brain. It roughly covers the frontal lobe. When they said the death rate is high in lesions in the neighborhood of the medulla and frontal lobes, they mean the same frontal lobes I am now speaking of. While the medulla and frontal lobes are separated considerably, lesions in that area, according to the text, are worse than other areas of the skull. I did point out the fracture in the frontal sinus to the Judge; that is the same frontal sinus that they refer to here when they say that "fracture through the frontal sinus may result in late meningitis." There was fracture of the vault of the skull. The fracture ran all the way from the frontal area to the posterior. He had a compound, comminuted, depressed frac-

(Testimony of Howard G. Romig.)

ture of the skull. Also he had linear fracture reaching from the front of his skull to the back of his skull.

This is page 254 and 255, and I think, with the permission of the Judge, I would like to just brief this because it is a little boring to read the whole thing. From these pages I glean the following facts: That after an injury of this type headache follows in 67 per cent of [48] the cases. This is intractable in some cases. Also dizziness, ringing of the ears, optic nerve injury, deafness, nervousness, fatigability, insomnia—the percentages are as follows: Dizziness, 60 per cent; ringing of the ears, 9 per cent; optic nerve atrophy, 19 per cent; deafness, 11 per cent; nervousness, 20 per cent; fatigability, 13 per cent; insomnia, 7 per cent. In other words, according to these percentage figures, considering Mr. Rowley's injury, he has a great likelihood of never ever being free of any one of these miserable symptoms. He has at the present time headache, dizziness, ringing of the ears, nervousness, fatigability, and insomnia. I would like to add, furthermore, that I have never solicited, or made a leading question of Mr. Rowley of all these symptoms he has given to me without me asking for them. From my observation—diagnosis—of Mr. Rowley, he has had as many as three to five headaches in a day, precipitated in some degree from concentration or nervousness. He has been free for never more than two days of headache, according to his story. I did not ascertain the number of times he became dizzy,

(Testimony of Howard G. Romig.)

but I assumed that it more or less paralleled his headaches. His symptoms of staggering occur rather rarely. Nervousness is a constant feature of his present personality, and I would like to say that Mr. Rowley has always been rather phlegmatic, stolid, and composed in his nature as long as I have known him. There is no other authority I would care to read to the Court in connection with my prognosis. In my opinion, based upon my diagnosis, he could not return to regular work at this time. I cannot say when he would be able to return to his regular work. Mr. Rowley has a chance of never being able to hold down a regular job. Based upon my diagnosis of Frank Rowley, he can "work at all" at the [49] present time. I have told him to do it. It is part of his treatment, and it is very necessary to his recovery. At the very time he left the hospital I told him to move about moderately and increase the amount of exercise and begin gradually to work. I meant work in some measure in the lines of his electrical work—something to do with the project he has in Mountainview, for example. The amount or quantity of work he was to do was more or less up to Mr. Rowley than to me. I mean according to his ability to tolerate work. By that I mean he was to work until he got tired, and to avoid working thereafter if he got too tired. I mean Mr. Rowley cannot hold a job in my opinion. I do not know that he will ever be able to hold a job. However, I would not be surprised if he could. The outlook as far as that is concerned is rather indefinite.

(Testimony of Howard G. Romig.)

As to future medical treatment, I think Mr. Rowley should seek the services of a specialist. I think it should be at any recognized medical center, preferably Mayo's. A round trip to Mayo's would cost \$400.00. The cost of this specialized medical service at Mayo Brothers would depend in some measure on what they would decide to do. It is altogether likely in Mr. Rowley's case he will be obliged to have his skull re-opened, scar tissue removed from his brain, any other piece of bone remaining within the brain substance would be removed. The delicacy and finesse of that operation is beyond me, at least locally. As to the cost of the examination alone I think the time consumed in being there, going through the clinic, is based, as I very well know, on a man's ability to pay, but it would certainly run, just for the examination alone and the time consumed, I would say \$1,000.00. [50]

Any other services that might be performed—for instance, if a piece of bone had to be taken out of his skull box would indeed cost him additional. I would like to point out, too: I expect Mr. Rowley to be in the hands of a physician for a long time on account of his present difficulty. By a long time I mean—well, it is indefinite, but I would say no man with this significant head injury could ever hope to escape a doctor's care for years and years.

In all the time that I have seen Frank Rowley I have never in my life noticed any evidences of malingering. Never.

(Testimony of Howard G. Romig.)

I am going to ask for \$750.00 for my services that I have performed to date on Mr. Rowley. I do not feel a doctor should necessarily have to itemize all of his work. I feel that that is a fair fee. I believe I saved Mr. Rowley's life.

Q. Why did you ask for \$2500 at one time?

A. Well, that was—I might have done hastily, and at the same time I considered the possibility of further medical consultation and work.

Cross-Examination

By Mr. Cuddy:

I do not know how long it took to perform this operation. I would guess three hours. I have performed three operations of this nature—two of those three have been in Anchorage. I do not mind stating who they were. Let me see—of course, the outcome of the case was unfavorable; the man died. His name—Dr. Walkowski helped me. He might even tell me the name. That was eight—nine years ago. I have not performed an operation of this sort for eight or nine years. These are not common operations. [51]

I testified that there are two depressed points in Mr. Rowley's head; two pieces of bone below the inner level of the skull. I testified that I removed one piece of bone at the depth of one and one-quarter inches; it was pressed into his brain tissue at a point which was an inch and a quarter from the outer table of bone. I approximated it. I stated that I put some bone tissue over his depressed area,

(Testimony of Howard G. Romig.)

hoping that it would grow or enlarge. It takes four months for that to be accomplished, to be conclusive—four months, five months. The area that was denuded of bone is not covered at the present time. Those which are present in yesterday's X-rays, I feel, are sustained by circulation, and are alive, but I doubt that they will ever cover the denuded area. It is my guess, or my thought in the matter that they will not grow to cover the whole area. I do not think I could be incorrect in that, and that they could grow and cover the whole area. I do not think it is possible.

I do not have any air in my brain at that point, or in that space—none at all. That in itself is not an unhealthy condition. Commonly doctors introduce air into the brain for purpose of diagnosis, but in this case Mr. Rowley has air introduced into his brain there and it cannot come from but one place, and that is the sinus. His fractured area communicates with his sinus and his nose is full of bacteria and, therefore, he could get, as I say, a late meningitis. That is all, except if there was a large amount of air it could depress the brain tissue. There is enough there to make a diagnosis of air. It is small, but the significance is not the amount of air; it is the fact that it has to come from the sinus which is obviously contaminated with bacteria. [52]

They pump air into the brain by putting a needle into a man's spinal canal. You can put it also into the brain itself, and they do. But the most common procedure is to put it into the spinal canal. That is called an encephalogram.

(Testimony of Howard G. Romig.)

Q. On the air there: That, as you interpret by the X-rays, is air. If there was air there would not it be indicated by a certain—well, say, discharges or some such item as that?

A. You mean from—discharges from where?

Q. The nostril?

A. Indeed, and he did pass blood, and a moderately increased amount of fluid from his nose, following the injury; but he does not now, not that I know of.

Q. Do you consider that serious, Doctor, at all?

A. Just of passing significance. I mean to point it out as one of the many possible complications in Mr. Rowley's case. As to its being very positive, or on the extremely indefinite side, I will leave that up to you with the other doctors. To my way of thinking, it is positive. I want this to be brought out to the presence of the Court, that the air is far from the most important thing in Mr. Rowley's case. He has brain damage; he has undoubtedly got scar, and this presence of air is just one of the many things that can be measured as a complicating feature to the case. At the present time there are no outward indications—excepting as I interpret the pictures of the X-rays that there is air there.

Q. And it is causing him no difficulty that you know of at the present time?

A. Now that is far from right. It could be in a large measure responsible for his headaches, dizziness, ringing of the ears, staggering—any of the rest of his symptoms. [53]

(Testimony of Howard G. Romig.)

Q. Does he stagger?

A. No; he feels he is going to stagger, which is enough; if you feel that unsteady you do not walk well. He demonstrated for the doctors yesterday that he could walk well and he did not stagger. He did rather well. He did not run up and down stairs. He did not travel fast. He traveled slower than normally. I believe I have known him for about eight years. I have treated him before. I think he was at the Providence Hospital—I do not know—worked there—I don't recall that I treated him while he was there. He has never had any other injury of significance so far as I know. Of course he has lost his eye. He has scar on his scalp; but they were not of significance as far as this case is concerned. There has not been a fracture before that I know of. There could be. There is a scar on his scalp. You can see it if you look at it. I believe I asked him about it when I was studying his case. The answer was insignificant. I cannot recall what it was. I don't place any importance on it. I do not know whether it was a fracture. Yes, he is of a phlegmatic type. He is a skilled tradesman so far as I know. I don't know about his early schooling. I know that he went to a trade school early or late in his life. I do not know whether he completed the fourth grade, or the eighth grade or twelfth grade. He is slow in his manner of address—as I said, stolid and phlegmatic. A Texan who drawls is not necessarily slow, you know. He could be quick.

(Testimony of Howard G. Romig.)

Q. Would you say that this case—the trial of this case, and the incidents thereto might not have a—some action upon him?

A. You mean to infer that he is a malingerer?

Q. Not exactly that, sir.

A. Do you mean to infer that, Mr. Cuddy: I can answer it if you do. [54]

Q. But perhaps the worry of the outcome of this case has an effect upon his life, or his thought?

A. You mean this case?

Q. Yes, sir?

A. The thing of paramount importance to Mr. Rowley is his ability——

Q. Wait a minute—just answer that question.

A. I will have to ask you to re-state it, then.

Q. Does not the trial of this case, perchance, have an effect upon his actions?

A. Certainly, it would make a man nervous. But right here I wish to take exception to any inference that the man is a malingerer, if that is what you wish to bring out.

Q. I didn't——

A. Well, you said maybe—is that what you mean? Do you? Answer the question.

Q. No, you finally answered the question.

A. I just want to be sure what you mean.

Q. Just the matter of fees, Doctor: The fees that have been set by the Alaska Railroad as fair fees, are they approximately along this line?

A. The Alaska Railroad fees are archaic in the actual sense of the word. Those were made before

(Testimony of Howard G. Romig.)

1930. In fact I would not be surprised if they were written in 1918. I believe a craniotomy in that scale is \$400.00; I don't know, but I believe that—I had one of those schedules a long while ago. But my fee in this case is \$750.00. I believe I saved Mr. Rowley's life.

Witness (Continuing): It is my belief; it is absolutely my opinion that the man will require medical treatment for some time to come.

Q. Although, as a matter of fact, it might be that on the conclusion of this case the man would rapidly regain his normal condition?

A. Mr. Cuddy, you are inferring he is a malingerer, and I say he is not. [55]

Mr. Grigsby: We object to this statement of the witness. There was no such inference.

The Court: Answer the question, Doctor.

Witness: Do I believe he could get well right after this case?

Mr. Cuddy: Yes?

A. No, I don't think he could get well right after this case.

No, I don't believe there is a direct connection of air now in that space that I have testified about, and the nostrils or the sinus.

Q. Is that air that was left there at the operation? A. No, sir.

Q. That has got in since? A. Yes, sir.

Q. How did it get in?

A. I think through the sinus. That is the only way it could get in there.

(Testimony of Howard G. Romig.)

Q. Now, that's what I wanted to know, Doctor. Is there a connection between the sinus and that cavity where there is air?

A. I said I did not think there was now. The fracture runs down the region of the sinus.

Q. Well, can air get in?

A. Sure, you can blow your nose and back air up into your brain now, if something were just a little bit wrong with it.

Q. Might there be that in my brain now?

A. I don't know, Mr. Cuddy.

Q. If no more got in, would the air absorb?

A. Certainly.

Q. Well, if you don't believe there is any air getting in there now, what is there would eventually be absorbed? A. That is right.

And thereupon

DR. A. S. WALKOWSKI

called on behalf of the Plaintiff, being first duly sworn, testified as follows: [56]

Direct Examination

By Mr. John Hellenthal:

I graduated from the University of Michigan Medical School in 1927. I interned at St. Vincent's Hospital, Toledo, Ohio, for one year; worked as a physician and surgeon for the Kennecott Copper Corporation up to 1930; from 1930 to 1937 I was railroad surgeon for the Alaska Railroad, at

(Testimony of Dr. A. S. Walkowski.)

Anchorage; and since then I have been in private practice until 1943. In July of that year I entered the Naval Service and was released from active duty on December 16th. I returned to Anchorage in February of 1946 and have been here since. I am a practicing physician and surgeon at the Providence Hospital. I am President of the hospital association or staff of doctors. I was appointed by order of this Court yesterday to examine Frank Rowley and I did so.

The diagnosis is based upon all the information that you can get from the patient or from any other source. That would be the verbal statement of the patient, or any other reliable source—friends, or parents, guardians—and then the findings upon physical examination enter into the final conclusion, and—symptoms enter into that diagnosis also. My diagnosis of Frank Rowley's case is that he sustained a fracture of the skull, the characteristics of which have been described by Dr. Romig. He sustained a tear of the fibrous covering of the brain, and also sustained damage and loss of brain tissue in the right frontal lobe as described by Dr. Romig. Those things I did not see. Since then he has been operated upon and been up and around. We pass on to the statements as made by Mr. Rowley as to his feeling, his sensations, and his general well being, or lack of it as you might add. In addition to [57] that there is evidence submitted by X-ray examinations at the hospital, and interpretations of those X-rays regarding his injury. I do not know whether

(Testimony of Dr. A. S. Walkowski.)

I saw all of the X-rays that the hospital had of Mr. Rowley. I think we may have seen six or eight. Based upon my diagnosis my prognosis will have to be necessarily guarded. I have not had the opportunity to observe Mr. Rowley a sufficiently long time to give as complete a prognosis as probably I should. A prognosis depends upon a little longer observation in this type of a case than I have been afforded.

Q. If Mr. Frank Rowley suffered an injury to his frontal sinus, such as I have described, what would be your prognosis, based upon the occurrence of that injury alone?

A. You mean the injury to the frontal sinus, not the frontal lobe?

Q. The frontal lobe of the brain?

A. There are very many factors that would enter into any complete statement that probably should be made in this case. That's what you have reference to—in this particular case?

Q. Just say, isolated injury to the frontal lobe of the brain, what would be the prognosis in a case of that sort?

The Court: I think it ought to be brought down to the instant case. The doctor has made some examination of the plaintiff and has seen the pictures and his conclusions—

Mr. Hellenthal: What would your prognosis be relative to epilepsy in the future in this case, based upon your observation of the wound and of the X-

(Testimony of Dr. A. S. Walkowski.)

rays and of the symptoms and the findings brought out at the examination yesterday?

A. Before I would answer that question I would like to ask Dr. Romig a question, if I may.

The Court: You may. [58]

Witness: Was the dura sewed completely?

Dr. Romig: I sewed it completely with four silk, interrupted sutures.

Witness: And do you believe that the dura has held completely with no opening in it so the brain would protrude?

Dr. Romig: I believe the dura has contained the brain and there isn't anything that would come out through the dura.

Witness: Now I see. Now, would you ask the question again?

Court: The question was the possibility, or probability of epilepsy.

Mr. Hellenthal: Based upon the diagnosis of this case.

Witness: There may be a possibility. The X-rays do show some overlapping of the bone fragments, and this would indicate a possible pressure on the brain at that point. I do not believe there are any more bone fragments in the brain substance now.

Witness (Continuing): I observed no symptoms of epilepsy yesterday. Dizziness would not always be a symptom. Headaches are a symptom of epilepsy, yes. It is very difficult to say how long Mr. Rowley will have these symptoms. I believe

(Testimony of Dr. A. S. Walkowski.)

I am not in a position to make any positive statement as to a prognosis based upon my observation and all, as to late meningitis. It is entirely possible that the fracture that is into the sinus does not necessarily mean that the sinus itself had been opened—that is, the lining of the sinus—so that air could get into it. However, there is that possibility, but we do not—in my opinion—I have no proof, but, however, there is that distinct possibility.

Q. Of late meningitis?

A. No, air getting into this part of the cranial vault. [59]

What would happen if it did, would depend upon the rate at which the air entered the cranial vault. That is what I am trying to explain. It would depend upon the rate at which the air entered the cranial vault. It would depend upon the amount and it would depend upon the location of the brain that the air surrounded or pressed down on. The result would depend upon all these factors. If there was a small amount of air in a relatively non-vital spot, like a medula, he probably would have no symptoms. If there was a large amount of air entered in at a rapid rate, the result would be more serious. Infection could be introduced at that time. Compression of the brain could result, which would give him very serious symptoms—might even cause death. My prognosis of continued headache in this case is that headaches can very well continue. For what length of time I would not be able to say. We do know that headaches do sometimes continue over

(Testimony of Dr. A. S. Walkowski.)

a rather long period of time. In that I mean years. I do not know what the possibilities are of dizziness continuing. It is possible the dizziness may continue. It may not. It is very impossible to say how long the dizziness could continue. It could continue for years. Dizziness and vertigo are practically synonymous. The possibility of blindness would depend greatly upon the appearance of complications, like infection or abscess formation or some other such complication. I could not say what are the possibilities of insanity.

The kind of fracture Mr. Rowley suffered was a compound, comminuted, depressed fracture of the right side of the skull in the frontal parietal area. There was also a continuation of the fracture forward into the frontal sinus and backward across the vault of the skull toward the left side. [60]

From my observation of Mr. Rowley I think his arithmetic and mental processes were retarded and confused. I think that he suffered a severe brain injury. In my opinion, based upon my observations, I believe that the loss of two-thirds of an ounce of brain tissue from the frontal lobe of the brain, as described by Dr. Romig, could result in personality changes. And also it could not. It could result in the present symptoms that Mr. Rowley shows. I think that if symptoms continue it may be necessary for Mr. Rowley to have the scar tissue removed from his brain, and perhaps the fragments below the level of his skull removed. It will depend upon the findings and the way Mr. Rowley feels. I think that

(Testimony of Dr. A. S. Walkowski.)

should be done if the present symptoms persist. I did say that I did not know when his symptoms would stop—whether it would be next week, next month, or a year from now.

From the history of this injury as has been described to me at the Board meeting from the operative findings, from the post-operative course followed in this matter, and from the present symptoms of the patient, and from my observation of the X-rays, and from my personal observation of the patient himself, I have no reason to believe that Frank Rowley is a malingerer.

Cross-Examination

By Mr. Grigsby:

The symptoms just referred to, such as headaches, dizziness, and ringing in the ears, are the ones described by the patient, and are called subjective symptoms. They can be judged only by the story of the patient himself. Unless there is some other nerve test made and close observation, we just take the word of the patient.

Q. Now, could those symptoms be aggravated or accentuated [61] on account of—not intentionally—I did not mean malingering—but on account of the anticipation of the trial, and the thinking about it and the ordeal of the whole affair, would that tend in any degree to accentuate or aggravate those symptoms? A. Yes, it might.

Q. Without any intention on the part of the patient? A. Yes, sir.

(Testimony of Dr. A. S. Walkowski.)

Q. Now, did you say, from your observations of the X-ray whether or not you could tell there was any quantity of air in the brain now, such as Dr. Romig described?

A. That is very much a matter of opinion. There may be air; there may not. The X-ray shows a loss of substance. Now whether it is air or not, or simply dark area in that X-ray due to loss of substance, I do not know.

Q. And that could not be definitely and positively stated from the X-rays?

A. I could not say so. My opinion is that I cannot say that it is all air.

Q. And could you say that positively—that any of it is air? A. No, sir, I cannot.

This fracture originally extended to the sinus.

Q. And at that time could air have penetrated the brain through the sinus from the nostrils? At the time of the injury could it have penetrated?

A. There is air in the sinus all the time.

Q. Yes, and could it get through the fracture into the brain?

A. The question is as to whether a fracture in the bone had continued on into the tissue lining around the sinus and opened it that way and allowed air to get into the cranial cavity?

Q. Well, if that condition existed today, so that air could today get into the brain from the sinus, would there be symptoms of it? Such as a discharge or a feeling of a sensation of bubbling that the patient would experience? [62]

(Testimony of Dr. A. S. Walkowski.)

A. If the cranial cavity and the sinus were continuous—that is, if there was still an opening—there is every likelihood that there would be cerebral spinal fluid being discharged through the nose.

Q. Were any tests made of Mr. Rowley in that regard to see whether such a condition existed in the hospital last night?

A. Yes, he was asked to blow his nostrils.

Q. And did it result in any abnormal secretion?

A. I don't think so.

Witness (Continuing): There were some physical tests made up there, yes, sir, during the examination. He was asked to walk and to manipulate his fingers; to squeeze the examiner's hands. His reflexes were tested; balancing tests were made, and he was required to state—or answer questions regarding recent and past events to test his memory; questions were asked him—mathematical problems, simple mathematical problems, to see how quickly and how accurately he could solve them. His one eye was examined; his ears were looked into and also his nostrils. I didn't examine his heart and lungs. His pulse was taken, and his blood pressure. His blood pressure was high—elevated. I thought his equilibrium was normal. He was asked to walk up and down stairs. That is part of the test of balance. I thought that was normal. I spoke of his grip, or strength of his arms being tested. I thought that his contraction was equal on both sides. I would say he was a normally strong man at the present time with respect to his arms

(Testimony of Dr. A. S. Walkowski.)

and shoulders, and legs. I heard Dr. Romig's testimony with reference to the advisability of his working within his capacity, as a help to him. I agree with that. I think that Mr. Rowley would be benefited by occupying himself with some work up to the limit of his capacity. I think the trade of [63] winding motors is completing the armature of the rotary part of an electric motor and the stationary magnets. How heavy that work is depends upon the size of the motor. It is a very difficult statement for me to make as to my opinion of Mr. Rowley's ability right now or in the near future to engage in that work. I do not think I am in a position to state unqualifiedly just what he would be able to do. That is purely a subjective reply, or condition, that Mr. Rowley would have to give me in order to form any opinion. I do not have any tests that I could make which would either support or refute any statement that he would make, because he says that work and concentration give him headaches. Headaches frequently follow skull fractures, and there are headaches from a great many other causes, yes, sir. Spells of dizziness follow a skull fracture frequently. Mr. Rowley did, in answer to questions, say that he suffered from dizziness to some extent, and also had some ringing of the ears and headaches. He did not show any symptoms of dizziness in going through physical tests that he was put through up there yesterday.

Q. Did he go through some tests which are known as aviation tests?

A. Coordination tests?

(Testimony of Dr. A. S. Walkowski.)

Q. Yes, standing on one leg? A. Yes, sir.

Q. For a certain length of time?

A. That is right.

Q. And on both feet with eyes shut?

A. Yes.

Q. And on one leg with the other one upraised?

A. Yes, sir.

Q. And that was applied to both legs?

A. Yes, sir.

Q. Did he pass very good tests in that respect?

Mr. Hellenthal: Just a minute. I object to the form of that.

The Court: Overruled. You may answer. [64]

Witness: I thought his response to those tests was within normal limits.

Mr. Grigsby: In other words, presently, physically he is in pretty good condition, is not that right? A. He seems to be, yes.

Q. From your observation of Mr. Rowley and what you have learned from the X-ray photographs, and also from his answers and the whole examination, would you advise an immediate trip to Mayo Bros. or some other institution for further examination, or would you consider it advisable for him to try out his usual and ordinary occupation? I mean right now? Or could you answer the question with the information you have?

A. I think Mr. Rowley should be given a chance to try his occupation to see whether he can or not maintain that type of employment.

(Testimony of Dr. A. S. Walkowski.)

Q. If he could stand a reasonable amount of that type of employment, and without undue fatigue or bad results, would so doing be calculated to improve his condition? A. It might.

Q. Now, Doctor, if, on the other hand, the course pursued with reference to Mr. Rowley would result in continued examinations and photographing and consultations as to symptoms, and those things which, to a certain extent, have been testified to as having been going on for the last few months, would that course have a tendency to accentuate his symptoms and, to a certain extent, postpone his recovery—having this on his mind and unsettled?

A. Well, an unreasonable amount or an unnecessary amount might do that, but I am of the opinion that these things will be done on the basis of symptoms that he will present. [65]

Q. They will be done in what we would say in common parlance, a workmanlike manner—a reasonable way?

A. Yes, sir. If he persisted in having symptoms, further examinations and further X-rays would be justified and they should be done.

Q. Also undue further examinations and photographs and things of that kind might tend to accentuate the symptoms, if it is overdone?

A. It conceivably might, yes, sir.

Q. Is that what you call developing neurosis, or some such word as that?

A. Well, there is such a word used.

(Testimony of Dr. A. S. Walkowski.)

Q. Well, Doctor, you are familiar with the old story about when a woman, or anybody else, reads of a patent medicine ad which asks a lot of questions—"do you suffer from dizzy spells?" and "have you" this and that—that a person can imagine they have all of them? Do you understand what I mean? A. Yes, sir.

Q. Now, a continual dwelling on a physical condition by the patient, and continual examinations, will have a certain effect along that line, won't it, on the patient himself?

A. It is very likely to.

Q. In other words, Mr. Rowley would be better off right now if the matter of this law suit was over and off his mind—he would be in a better position to recover? A. Well, he conceivably might be.

Witness (continuing): Mr. Rowley said that he had gained weight lately; that he was overweight now. I think he said his appetite was good. My impressions were that his appetite was not adversely affected.

The Court: What is the function of the part of the brain which in Mr. Rowley's case was injured?

Witness: It is reputed to be associated with higher thought, memory, the thinking processes, what we normally call thinking processes—association of ideas. [66]

The Court: Well, is it generally thought that an injury to one man's brain may result in suffering, or even death, and a similar injury, or substan-

(Testimony of Dr. A. S. Walkowski.)

tially the same injury, to another man's brain may not result in any such serious condition? What is the general opinion of your profession on that, do you know?

Witness: Well, in some cases the part of the frontal lobe is removed, for instance brain tumors.

The Court: Insanity, you mean?

Witness: There have been cases recorded in which personality changes have evolved from operating on the frontal lobe of the brain, yes, sir.

The Court: Well, is it or is it not true, Doctor, that in the vast majority of the cases such injury to the brain as was suffered by Mr. Rowley results in a decided shortening of the injured man's life and in general physical deterioration of one kind or another?

Witness: I don't know definitely as to whether it would shorten a man's life or not. The personality change that would occur, if any, would depend upon the individual.

The Court: It couldn't be certainly forecast—mathematically forecast—for either one of them?

Witness: No, sir.

Mr. Grigsby: Doctor, there are a great many possibilities and probabilities which cannot be stated within any degree of definiteness, is that about the situation? A. Yes, sir.

And thereupon,

DR. RAYMOND B. COFFIN

being first duly sworn, testified for and in behalf of the plaintiff as follows: [67]

Direct Examination

By Mr. John Hellenthal:

My name is Raymond Benjamin Coffin. I am a physician and surgeon. I graduated Boston University School of Medicine 1935; interned at the Binghampton City Hospital, Binghampton, New York, 1935 to '37; general practice and surgery in Southwest Harbor, Maine, 1937 to '42, and member of the medical surgical staff of Bar Harbor Hospital; in United States Navy 1942 to February, 1944; United States Marine Corps from '44 to January, '46; continuous practice in Anchorage since April, 1946. I have been engaged in general practice and general surgery. I have had considerable experience with regard to compound or comminuted or depressed fractures of the skull. I examined Mr. Frank Rowley briefly the morning of the injury, also at the Providence Hospital yesterday. On the morning of the injury I saw him at Providence Hospital on the operating floor. He had just been brought to the operating floor in a wheel chair. He had a laceration of his scalp with brain tissue protruding through the scalp wound, and with the help of a nurse we were shaving the hair and preparing the wound. My description of that laceration of the scalp would be very approximate since I did not follow the case. I would judge it to be approxi-

(Testimony of Dr. Raymond B. Coffin.)

mately three inches (3") long on the right frontal area of the scalp. There was brain tissue protruding from that laceration. You could see it protruding through the scalp wound. The only other contact I had with Mr. Rowley was the examination at Providence Hospital yesterday afternoon. My observations on that examination were that Mr. Rowley, on objective findings showed some apparent clumsiness of physical and mental activity; he had no paralysis or total loss of reflexes; he complained of subjective symptoms which consisted of headache and dizziness, ringing [68] of the ears, sense of unsteadiness, particularly pronounced on exertion, either mental or physical. I studied the operative findings and the post-operative course followed in the treatment of Mr. Rowley at the meeting yesterday. The diagnosis is a post-traumatic fracture of the skull and laceration of the brain tissue with residual symptoms consisting of hypertension, high blood pressure and an impairment of mental and physical efficiency. I would believe the prognosis as to life is good, but prognosis as to full recovery of complete mental, emotional and physical efficiency would be rather poor. If I were Frank Rowley's physician, based upon the diagnosis I have referred to, and the prognosis just mentioned I would counsel him to follow further specialized medical treatment. I would not recommend that Frank Rowley assume any regular work at the present time. I believe he should attempt to work though at the present time. The conditions

(Testimony of Dr. Raymond B. Coffin.)

or the controlling factors in that attempt should be chiefly, his ability to do such work without causing severe headache, or any great exaggeration of his symptoms of dizziness and sense of unsteadiness. It would have to be left to his discretion.

The fracture I observed on Mr. Rowley's head is commonly described as a compound, comminuted, depressed fracture. I would have no opinion as to a specified time when Mr. Rowley's symptoms will stop. I believe that it would be longer than a month. It could very easily be a year; it is possible it might be five years from now. It is slightly possible it might be ten years from now. Under certain conditions they could become aggravated and more persistent and continued than they are at the present time. It could happen at any time. It could happen a year from now. It could happen five years from now, possibly ten years. I [69] would have no opinion as to happening twenty years from now. That is too distant to have an opinion.

Q. Now, doctor, in your opinion, based upon your observations, your complete observations of Mr. Rowley that you have already described, do you think the loss of two-thirds of an ounce by volume of brain tissue from the frontal lobe of a brain could result in personality changes?

A. I cannot answer the question exactly that way. I mean by that, whether it is the loss of brain tissue or the scarring and damage suffered to the brain. The type of injury he has, yes, yes, could result in personality changes.

(Testimony of Dr. Raymond B. Coffin.)

Q. Do you think that some time in the future that a man suffering from that type of injury should have the brain scar removed, or might be forced to have it removed. By brain scar I mean brain scarred tissue.

A. Well, I think it's—my opinion would be that it is unlikely that it would be removed. It might possibly need to be freed from the skull, if it becomes attached—adherent—but it is not common practice to remove those scarred areas. It is possible that a man suffering from that same type of injury might have to have the fragments of skull beneath the level of his skull removed from his brain at some time in the future, if they produce pressure symptoms. It's a possibility that might have to be done if the present symptoms persist.

Based upon my knowledge of the history of this injury, of the operative findings, of the post-operative course followed in the treatment of this injury, based upon the present symptoms of the patient and from my observations of the patient himself and of the X-rays, I do not think that Frank Rowley is a malingerer. [70]

The Court: Does any scar tissue form on the brain tissue itself from the brain tissue? Or is the scar tissue you mention the scar tissue of the dura?

A. Your Honor, there would be a scar formed at the site of the closure of the dura. There would also be a scar formed on the surface of the brain that has been injured, and the two might become attached—the two scarred areas might heal to-

(Testimony of Dr. Raymond B. Coffin.)

gether, or even heal to the fractured surface of the skull. That would be deleterious, hurtful; that would be more likely to produce symptoms than if they did not heal together. It is the usual cause of the epileptic form of seizures that these skull injuries—concussions—have.

It would be very possible to perform another operation on Mr. Rowley's skull at the site of the injury and not have scar tissue resulting from that operation.

Cross-Examination

By Mr. Grigsby:

I do not mean to imply that I am a specialist with cases of this kind, but I have on different occasions seen a considerable number of these cases—observed them. I have performed similar operations, probably—possible ten or a dozen or so.

Q. Doctor, with respect to these physical tests that this man was put through yesterday—for instance, as to what is called equilibrium tests for aviators—how did he respond to those?

A. He did very well.

Q. And walking up and down stairs?

A. It was good. His balance was good.

Q. Did you find him—did you test his strength?

A. Yes, sir, it was good.

Q. Is he strong? A. Yes. [71]

He is not markedly deteriorated in physical strength. It is reported by himself and his physician that he has gained weight. I tested his grip,

(Testimony of Dr. Raymond B. Coffin.)

his reflexes, and the strength of his arm. He was asked to stand on one leg with his eyes shut, and then on the other. He responded to those tests.

He complained of dizziness, headaches, and ringing of the ears at intervals. Those are symptoms that very frequently, commonly, follow a skull fracture. It is possible that according to recovery or not they pass off or get worse, that they might pass off and discontinue or they might become worse. I could not say positively, no, sir, from the limited examination that I have had the chance to make, right now, whether this man will improve or won't improve.

He should engage in a light—some light and pleasant type of occupation. I am not enough familiar with his past occupation to know the conditions of it, but it is largely a matter of training—re-training, and he should engage in some type of occupation within his capabilities.

And thereupon,

DR. GEORGE G. DAVIS

being first duly sworn, testified for and on behalf of the defendant, as follows:

Direct Examination

By Mr. John Hellenthal:

My name is George Gilbert Davis. I have practiced surgery as a specialty until I came to Alaska. I am a member of the American Board of Surgery,

(Testimony of Dr. George G. Davis.)

Western Surgical Association, American College of Surgeons, Chicago Surgical Society, and the American Association for the Surgery of Trauma—which means injury. I have taught surgery in Rush Medical College since 1907, until I came to Alaska in 1943, carrying out each [72] step by step from the lowest grade of instructor to associate professor of surgery at the time I left Chicago. I was graduated from Rush Medical College in 1904. Served in internship in surgery with Professor Nicholas Senn, and internal medical internship with Professor Sippy, gastro-intestinal diseases.

After finishing internship, I went for post graduate study in Vienna in 1906; studied the entire year of 1906 in the University of Vienna in general diagnosis. First of the year 1907 I went up to Berlin and entered the University of Berlin. Studied with the University of Berlin Hospitals until June, 1907. In 1907 I was associated with Professor Bevan, who was the head professor of surgery at Rush Medical College, teaching and practicing surgery at the same time. I continued that from 1907 until 1913 when I went for the government to the Philippine Islands as associate professor of surgery at the University of the Philippines and surgeon at the Philippines General Hospital.

In 1914 war was on and I was anxious to get into it so I resigned and took a commission with the British Army as honorary Lt. Colonel in the Royal Army Medical Corps and stayed with them for two years in a 1040-bed hospital. I returned to Chicago

(Testimony of Dr. George G. Davis.)

after the war. After two years with the British we went into the war and I went into training camp the first of June, 1917, organized Evacuation Hospital No. 1 and took it over to France as a surgeon. I stayed with our troops, first doing work in Evacuation Hospital No. 1 and doing surgery—Chief of Staff of that hospital—surgical staff—and then when the fighting began in June, 1918, I had what is spoken of as a casual surgical team. I took them around the different fronts in five major engagements. At the time of the armistice I was made surgical consultant for the Third Army and had charge of [73] the operative work of the Army of Occupation in Germany and Luxembourg.

I returned to Chicago in 1919, about September. At this time I continued my work with the teaching. I also took the examination for Cook County Hospital Surgical Staff and continued my work on the surgical staff at County Hospital from 1919 until I came up here in 1943. From the year 1919 until 1937 I was Chief Surgeon for the United States Steel Corporation, and in the Chicago District, of which there were about twelve different subsidiary companies, namely, the Illinois Steel, the American Sheet and Tin Plate, the American Bridge, Chicago, Joliet and Eastern Railroad, Universal Portland Cement, and others. I continued with the corporation until '37 when I resigned. I continued my Cook County Hospital work until the day I left Chicago, teaching surgery at the Cook County Hospital mostly.

(Testimony of Dr. George G. Davis.)

Since arriving in Alaska I have been in general practice. When I came up here I took over the position of Chief of Staff at the Alaska Railroad Base Hospital at Anchorage, which was surgery plus general medical work. I have done practically all type of general work up here, internal medicine, obstetrics—during my whole life I never practiced anything but surgery, up until the time I came up here. I am a general surgeon. I have had considerable experience with brain fractures both in the practical sense and in the academic.

I have made a diagnosis of Mr. Frank Rowley. I made that yesterday. That was not the first contact I had with Mr. Rowley. My first contact was the day he was injured. On that day I noticed he had a laceration about three inches long of the right frontal region, and that brain material was escaping. I looked at it. That is all I did. I saw laceration [74] of the scalp and that there was brain material escaping from the wound, and I could also see that there was a depressed fracture. You could see the continuity at the site of the laceration, that there was a depression there. I did not see any fragments of the skull. I would say if my memory serves me correctly, the length of that laceration was about three inches (3") more or less. After that I saw Rowley sitting on a bench at the hospital during his convalescence. I greeted him but not in a professional manner.

When I examined Mr. Frank Rowley at Providence Hospital yesterday, Dr. Walkowski suggested

(Testimony of Dr. George G. Davis.)

that we examine, and it was agreed upon that we would take the subjective symptoms, first. By subjective symptoms we mean what the patient himself feels or complains of as in contradistinction to what the examining person might observe. So Mr. Rowley was asked the question, what he observed about himself that bothered him at the present time, since the injury, as in contradistinction during his time of normal health before the injury. The first point that Mr. Rowley made was that of headache. He stated that he had a headache; and we asked him to point where that headache was, and to point with one finger. He pointed in the area of the healed laceration at about the border of the hairline, which would be at about the junction of the middle and anterior one-third of the scar. We asked further about the headaches. He said that they were not present all the time. We asked if he had one at that time; he said "no." Asked when was the last headache, he said the night before, and they came and went at times. That was essentially the subjective symptom regarding the headaches.

Second, he complained of a ringing of the ears, which was not present all the time, but at times.

The third subjective symptom he complained of was dizziness. He felt dizzy—was the word he used. It is hard, [75] maybe, to understand what a patient might mean when he says he is dizzy, but if he said dizziness to mean equilibrium, that would go through the examiner's mind and he was asked if he used a cane and he said "no."

(Testimony of Dr. George C. Davis.)

Later, when Dr. Coffin was questioning him, he said that he had dreams that were described by him as nightmares. To the best of my memory that is a correct summary of the subjective symptoms.

I did not understand Mr. Rowley to say that he could not balance himself. I understood him to say that he was dizzy, and I am not sure just what he meant by that and that is why I asked him if he used a cane. If there was a disturbance of equilibrium and he said he did not use a cane, I thought possible further tests along that line would be advisable. I do not remember that he used the word "concentration." I made a mental note. I do not remember the details, but I remember those things outstanding were the four things, with the so-called nightmares those were the four points clear in my mind because I made a mental note—I did not write them down but I catalogued them in my mind—if I remember correctly.

Then it was decided to find out what we could from our objective point of view. Now, the fracture being in the frontal region, it seemed advisable to find out if the functions that are normally involved in the frontal region were disturbed. Those functions in the frontal region were spoken of as those of higher centers of intelligence—intelligence, consciousness, reason, conscience—so in order to test his frontal lobe physiological reaction, I asked him a number of questions. I asked him how much two times four was, and he said eight. I asked him how much three times seven was; he said 36. I asked

(Testimony of Dr. George G. Davis.)

him how much six [76] times six was; he said 36. I asked him how much two times nine was; he said 18. I asked him how much eighteen and nine were; he said 27. I says how much is three times nine; he said 27. Then to establish whether he was mentally in touch with his environment, I asked him who the President of the United States was, and he said President Truman. I asked him if the longshoremen's strike had been settled or not. He knew about the strike but he said that he did not read the paper that day. I asked him about the coal strike with John L. Lewis. He knew about the coal strike, but he did not know the outcome of it. He said again, he had not read the papers. Part of his examination was due to see if there were any aphasia—that is disturbance of speech—which is a physiological—the speech is a physiological function of the frontal lobe. His answers were made readily; they were coherent, and very little hesitation, I thought.

I palpated—upon inspection I noticed he had a scar in the left frontal region, about three inches long, evidently from a former injury antedating the one that is in question today. I did not quiz him on that. I palpated the scar in the right frontal region, which is the injury that is under discussion. It seemed firm, except in an area just above the region of the hair line which had less resistance than the posterior part of the scar and the anterior part of the scar. When I pressed upon this he gave evidence of—not—of desiring that I should not

(Testimony of Dr. George G. Davis.)

press on it—he said that caused pain. We asked him about his appetite and he said it was good. Asked him about his weight, and he said his weight had increased. As I understand it he weighs more now than before the injury, from his conversation. We were interested in this question of being dizzy—whether that word “dizzy” meant that he had a disturbed equilibrium is important. [77] So we gave him a test that is regularly applied to aviators for equilibrium test. That test consists in requesting the patient to flex his right knee, bring the foot off the floor, and after he has established his balance with his eyes open, he is requested to close his eyes and when he does that put on a stop watch and see if he can preserve his equilibrium and not touch the raised foot to the floor. 15 seconds is considered perfect, and an aviator is taken in on that score as the perfect score. If they touch the floor before they are classified as unsteady. Mr. Rowley held first his right foot off the floor with his eyes closed for 15 seconds, and then again he did the same procedure with the left. So from that test, which is a fair test, it would seem that he had not lost his sense of equilibrium, but still he had that sensation which might be difficult for him to describe, but which he classified as feeling dizzy. It is hard for one examiner to get what really the man feels by words.

Then we looked in his ears. I saw no perforation of the ear drum on either side; looked in his eyes. His eye grounds seemed normal. Looked in his

(Testimony of Dr. George G. Davis.)

nose to see if there were any cerebral spinal fluid. I saw none, and in order to check on that I requested him to cut off the air of his left nostril and blow his nose just as hard as he could on the right side, and nothing came out. Then I requested him to put his finger on his right nostril and again blow his nose hard. A bit of mucus came out, but no cerebral spinal fluid. Then it seemed advisable to test his strength, so we requested him to flex his fingers and flex his arms and extend them and touch his hands over his head, which he did. Then requested him to squat—to go down slowly and come up again. Evidently no loss of strength as far as supporting his body was concerned, or no loss of reflexes. [78]

And there was another test I made too that I didn't bring out—two tests: One requesting him to stand with heels together and close his eyes and he did not sway more than normal, if any. That is a test for balance. Also I requested him to close his eyes and bring his fingers together and touch his finger, which he did, showing his coordination was good. Dr. Coffin was anxious to see how he reacted as to his balance, evidently, going up and down stairs. So he went from the main floor of Providence Hospital up to the little turning area, about 15 steps, I would say. He went up with good coordination, and also came down with good coordination. Then we looked at the X-rays.

I am not absolutely clear just exactly what Dr. Romig said as to his findings as to the subjective symptoms of the patient, but I heard what he said

(Testimony of Dr. George G. Davis.)

today. I remember him discussing the numbness in his arm that he once complained of. I remember there was some such remark, but I am talking about our examination where we had first the subjective symptoms and then what we found. I listened to Dr. Romig's discussion in the case history.

If you wish me to say more about that, Dr. Romig stated at that time that there had been approximately an ounce of brain tissue removed at the time of the operation. Then we looked at the X-rays. There was some talk as to what was the diagnosis of an area of lesser resistance in the region of the area where the depressed fracture had been. Some persons present gave an opinion as to what their diagnosis was on that. There was a discussion at that time whether the three doctors—Dr. Walkowski, Dr. Coffin, and Dr. Davis—should discuss things together and send in more or less of a combined report. It was decided that that was not the intention—that each [79] doctor should make his opinion and his opinion should be given individually in court here; and I did not discuss the case with anybody—any doctor from that time. And that's up to now.

The X-rays showed a definite change from the time before operation. Before operation there was a very definite depressed fracture. After the operation there was a very excellent elevation of the depressed fracture. I would say, in excellent position—good job had been done. The X-rays showed that the bone did not entirely cover the area that had

(Testimony of Dr. George G. Davis.)

been opened. I mean by that, this: As Dr. Romig explained, he put the fragments back that were suitable and there were a number of comminuted or loose fragments which he did not use, feeling that maybe they were infected, but a number of them he did use. So there was definitely a bone defect, which he described as an area of about a 25c piece. There is an area, and in a lateral view you could see the bone in a very good position along the vault. But between the vault of the skull and the shadow cast by the brain, there is an area of lesser density, which Dr. Romig spoke of as air. That area, in my opinion, might be considered from a differential diagnosis point of view. There are things that give similar appearances. One is that air could do that if it pressed the brain down. On the other hand, if there were no brain tissue there, then that would cast no shadow and that area of lesser resistance could give a picture as if there were air there. I understood Dr. Romig to say that he thought it was air. I believe I heard him say this morning that could have been air or an absence of tissue. It would seem to me that the fact that the man lost about an ounce of brain tissue, and I think those who have seen the X-ray—if you could imagine that [80] you had an ounce of opaque fluid and would put that in where that brain is now, it would just about fill out that contour. That would be an estimate and my opinion. That is all.

Q. But it could also be just an absence of tissue, or it could possibly be air?

(Testimony of Dr. George G. Davis.)

A. I have an opinion on that. We have not taken that up yet. I am discussing the differential diagnosis. Those things could happen. That would naturally come under a differential diagnosis. You must have some reason to suspect it is one or to suspect it is the other. Now, we have the history, which is very definite, by Dr. Romig, that he lost an ounce of brain tissue, more or less. We know that brain tissue never regenerates, meaning by that the hair grows out if you cut it, and if you break a bone the bone regenerates and throws out new bone tissue. That is only true as to the central nervous system. That means the brain and the spinal cord. That is not true of the other nerve. You can cut a nerve and they will grow out, but when there has been a loss of brain tissue or an atrophy or death of brain tissue by scooping out or injury or trauma, the brain will never regenerate. Neither will the spinal cord if it is once dead. And that is true as to the optic nerve because it is simply an outlying portion of the brain. That is the only nerve in the body that will not regenerate.

Now, that patient has a very definite atrophy and the distance from that area, which we would speak of as the superior border of the brain tissue, you could notice it was quite a distance between the skull and the brain tissue.

Now comes up the analysis of the question of air and the frontal fracture going into the frontal sinus. About two days, I think it was, after this patient was injured, I was apprehensive because I

(Testimony of Dr. George G. Davis.)

have had cases where there has been a [81] fracture into the frontal sinus and they had air going into the cavity and cerebral spinal fluid coming out. I am not sure what day that was, but it was within two or three days. I had not seen Dr. Romig after the operations until that time, and I asked him—I called his attention to that frontal sinus fracture and I was a bit apprehensive that maybe he might have escaped cerebral spinal fluid and air, which I had in a case that was very perplexing until we overcame it. Dr. Romig said at that time he spoke to me that he had noted it. And I also asked the patient yesterday if he ever had any cerebral spinal fluid escaping from his nose, or any fluid coming from his nose, and he said “no.” Dr. Romig mentioned that he had blood—bleeding—but that is entirely different picture from the cerebral spinal fluid. Clinically, this patient has not had cerebral spinal fluid nor air in his skull from the frontal sinus—that is, I am giving an opinion now. And I shall state my reasons:

Clinically, when air comes in from the frontal sinus, the patient feels that just as definitely as you can feel a boiler bubbling, and they will say, “I feel a bubbling as if a boiler were bubbling over in my skull.” I have heard no symptoms such as that, and there is a large amount of fluid that keeps—runs out the nose, especially when the patient coughs or strains a bit. One can see in these cases a line of air from the frontal sinus up to the area of the fracture. In none of these X-rays have I seen any such area of air.

(Testimony of Dr. George G. Davis.)

Q. Didn't Dr. Romig, himself, say that he did not regard air as of any particular significance in this diagnosis? I am trying to save time in dwelling on this question of air. In other words, you agree with Dr. Romig on that point?

A. In my opinion that no air went from the frontal sinus into the skull? I can quit there? [82]

My diagnosis that this patient is suffering sensory symptoms as a result of an injury which consisted of a fracture of his skull which was compound, comminuted, depressed, with a laceration of the dura and a laceration and loss of brain substance, without loss of functions of the body.

Q. Do you regard the brain damage as the most significant feature of this injury? The damage to the brain is the most significant thing?

A. Well, I would not say that. I think it is of great significance, but the loss of brain tissue in itself is not very important. The entire lobe can be taken out—the frontal lobe—without loss of the normal symptoms.

Q. You mean every man can have his entire frontal lobe removed and go along fine?

A. Yes.

Q. Every man?

A. I say it could be done. Frontal lobes, both of them, have been taken out entirely and the man have orientation as to time, place and person and speech and reason and exercised mathematical problems. That is very definite; and the frontal lobe is being taken out day after day.

(Testimony of Dr. George G. Davis.)

I say that it can be taken out without loss of functions that we have thought of as essential or centralized in the frontal area. That has very definitely been done and is known.

Q. Well, does that mean, though—you mean to say that it can always be done, or it is possible to do it?

A. Well, it is done. It is being done every day.

Q. And then, if I wanted, for some reason or other, to have the frontal lobes of my brain taken out, I would do it without possibility of much injury to myself?

A. Well, I wouldn't advise it as a treatment, but I am telling you that [83] the work of Dandy's, where both lobes have been taken out—refer to the American Journal of Physiology.

I think Frank Rowley had a severe brain injury—yes.

Q. Now, Doctor, do you think that the loss of two-third of an ounce by volume of his brain tissue, from the frontal lobe, as described by Dr. Romig, would result in personality changes?

A. I think that, plus the entire episode of the injury and the operation and shock might have an influence upon the patient. I would not put it just the loss of the brain tissue so much as the shock and the contusion and the operation.

Q. I would like, though, Doctor, for you to answer my question. Do you think that the loss of two-thirds of an ounce by volume of brain tissue would result in personality changes—in your opinion?

(Testimony of Dr. George G. Davis.)

A. Well, will you allow me to connect this up with this man?

Q. I would prefer first if you answer the hypothetical question.

A. Well, I would think it might, yes. I would say that in addition to the loss of brain substance, the shock, and there is a certain amount of contusion to the brain other than the loss of the brain substance itself.

Q. Now do you think that the loss of two-thirds of an ounce by volume of brain tissue as described by Dr. Romig in this particular injury would account for the subjective symptoms?

A. I think it has its quota of influence. I think that these other—these subjective symptoms are also due to the shock of the injury and the operation and the convalescence. I think they all contribute to the change.

Q. But do you think that the loss of brain tissue that I have described would account for the present subjective symptoms?

A. I think it is possible. [84]

Q. Now, in your opinion, Doctor, do you think that Frank Rowley should some time in the future have the scar tissue removed—might have to have the scar tissue removed from his brain?

A. I don't see why at the present time.

Q. I say, at some time in the future, Doctor?

A. Yes, and I say I don't see why. I don't see the indication—the fact that this brain is not near the vault.

(Testimony of Dr. George G. Davis.)

Q. I don't think you understand my question. I said, do you think that Frank Rowley, some time in the future, might have to have the scar tissue removed from this wound?

A. Well, I say that it might be possible. I couldn't say that it would.

Q. And you could not say that he would not have to have it removed? A. No, sir.

Q. Now, do you think some time in the future Frank Rowley might have to have the fragments taken from his skull or brain vault—the fragments of skull?

A. No, I don't think that is necessary. I don't think it conceivably necessary. In the first place, for the reason that the frontal lobe is a silent area; that we see cases in childbirth where they put forceps on, you see a great big indentation in the frontal area; and the man has a normal, healthy mentality. And in this case the brain is not being pressed on by those fragments. It is quite a distance, as we see in the X-rays, where they had the discussion about air. I cannot see any need for it.

Q. You spoke of depressed skulls and mentioned infants. What about—have you had experience with adult skulls in the same regard?

A. Well, I was trying to bring out the point: In the frontal lobe, where there has been a pressure exerted by the bone depression, that these people go along and lead a normal life. I have seen many of those cases. Now, I think that this fragment will

(Testimony of Dr. George G. Davis.)

never grow to sufficient—the way we would have in the sense of a bone tumor. One [85] could think of an osteoma, a bone tumor, that would get large enough to press down, but a fracture of the skull does not throw out enough bone to protrude down to the depth that will cause pressure on the brain. In my opinion there is no possibility of a bone tumor in this case. I would say that Frank Rowley suffered a severe brain injury; that he had a loss of brain tissue—that is severe. He had a compound, comminuted, depressed fracture at the site of the application of the force, and a stellate fracture radiating at different points in addition.

From the history of this injury that I know of from the operative findings, from the post-operative course followed, from the present symptoms of the patient and from my observation of X-rays and the patient, I do not think that Frank Rowley is a malingerer. I think he stated his case very fairly. I believe that Frank Rowley should be returned to work, whether he can work eight hours a day or night I would not say.

Q. Should he be returned to regular work?

A. Well, I don't know what regular work is, but I do not see why it should not be regular. How much he can do of regular work I do not know, but I think it would be an excellent thing for him to return to what part of regular work he can do. I mean I don't know how many hours he can stand. I would put it a great deal up to him—the way he felt. After he worked an hour if he felt like

(Testimony of Dr. George G. Davis.)

working another, work another. If he felt like working four, he could work four. I would leave it up to the patient, entirely.

Q. How long do you think that condition will last where he should work only in his own discretion?

A. Well, I would let him do that until he was working full time regularly. [86]

Q. How long will that state of affairs continue where he works only at his own discretion?

A. I could not determine that, I think that the hours he works at the first return will be comparatively few that he will work; at the end of a month he will be working much more.

Q. What I want: to make it clear to you. I am speaking of this condition where he works subject only to his own will or discretion that you spoke about?

A. Well, of course that depends very much on his will. I feel sometimes as though I would never work again.

Q. Do you think that might be a week from now, doctor, when he would not have that condition facing him? Would it be a week from now?

A. Oh, I think he will have it longer than a week.

Q. Would it be a month? A. I imagine.

Q. Might it be a year?

A. Well, I believe he might have subjective symptoms a year, but I believe physically he could do his work. I think if I understand it right, work

(Testimony of Dr. George G. Davis.)

such as wiring and electrical appliances, &c——

Q. At his will and at his discretion?

A. Yes.

Q. Only at his discretion though?

A. Well, who else's discretion? You can't force him to work. I don't know what you mean. Nobody does only what they want to, but I say there should be a time—you are not sentencing him to any special work at any time. If I had a patient I would advise the patient to try to work as long as he could without undue fatigue. Yes, that is substantially what I heard Dr. Romig say that he advised Mr. Rowley to do.

Q. Now, you have said that for at least a week he would have to work at will. Now, a month from now, should he be working at his will, or could he take a regular job?

A. Well, I think if he can work on his regular job—you [87] mean to put in the eight hours a day when you say regular job? Regular job like an average man holds? Well, if his work is such that it is not too strenuous—I mean, if he is using his mentality and his hands and legs, I don't see why he couldn't improve a great deal in a month.

Q. Could he do work regularly in a month, doctor, for instance, on your payroll?

A. Physically, I think he could. I think he might be handicapped in doing it because he thinks he might have headaches, or might have what he complains of as ringing of the ears, or what he

(Testimony of Dr. George G. Davis.)

speaks of as dizziness. But physically, when you say the word "could" that means "to be able to" and I think he could.

I think it is possible that Frank Rowley might have a feeling of headaches a year from now. I would not know whether he could have dizziness a year from now. I would believe that he could not have them recur a year from now?

Q. Is it possible that he might tomorrow recover completely—have no feeling of dizziness, headache or any of the symptoms he has described, and then have them recur a year from now?

A. Well, there might be a change of condition. I would say that it is possible for the person to have a change of condition.

Q. Now, is it possible for those symptoms to recur, say, ten years from now?

A. Well, that is pretty hard to say what is possible and impossible, but I would say he might have a change of condition, even at ten years—it is possible he might, but I wouldn't say it was probable.

Q. Now, doctor, what would you advise Frank Rowley to do with regard to working?

A. I would advise him to go back to work.

Q. What work?

A. Whatever work he does. [88]

Q. You don't know what that is?

A. I understand that—

Q. Wait—do you know what that is?

A. No, sir.

(Testimony of Dr. George G. Davis.)

Q. Now, what are the possibilities, doctor, of Frank Rowley contracting epilepsy in the future, or today?

A. Well, if you will describe to me what—what you mean when you say “epilepsy”—now epilepsy is a very general term.

Q. I use it in the same sense as it is employed in Wechsler here, for instance. We were discussing what we meant by epilepsy and I said what was referred to in the Attorneys’ Textbook of Medicine of epilepsy. There is a chapter at page 251 in Gray’s Text entitled “Fractures of Skulls.” A sub-chapter is entitled “Epilepsy”. Now that is what I mean by epilepsy. Now, doctor, based on your diagnosis of Frank Rowley, what possibility does he have of suffering from epilepsy, in the future?

A. If we might discuss the word “epilepsy” a little further I would try to bring out my opinion.

Where he says fractures of the skull, that is a very general term. It depends where the fracture is and what type of epilepsy. For instance, the word “epilepsy”—the average person feels that when you say epilepsy they speak of a fit.

Mr. Hellenthal: His is a medical book, doctor.

A. Yes, I am talking about a medical book, too—use that as a general term. Epilepsy is used as a general term, but if you read further there in this book, you will see under the classification of epilepsy you will see major mal and petit mal. Do you see that there?

Mr. Hellenthal: No, doctor.

(Testimony of Dr. George G. Davis.)

A. Well, it is in there, I will bet.

The Court: What are those words? [89]

Witness: Grand mal and petit mal, grand meaning large and petit meaning small. Now, the sentence that you read there talks about fractures in general. Now, in grand mal we get contractures in epilepsy, and they may be of a origin idiopathic from unknown causes or they might be from a fracture in the motor center area. If they are not in the motor center area they would not get the sense of epilepsy in the sense of grand mal. That's where you get contractions and falling down and losing consciousness and biting your tongue and the tongue bleeding. Now, there are other types of epilepsy that are not connected with grand mal and that is called petit mal, where a patient will have a sensation of something the matter with his brain—maybe a sensation of dizziness and, unknown to him, he loses consciousness but he has no seizures. I saw a case recently down here at the——

Mr. Hellenthal: Now, doctor, have you defined epilepsy, then, as consisting of two types, grand mal and petit mal?

A. Yes, and other types, traumatic and non-traumatic.

Q. What other types?

A. Idiopathic. Those are the main classifications. Generalized epilepsy is when it starts in one part of the body; in Jacksonian epilepsy that is a term applied to epilepsy where it starts from——

(Testimony of Dr. George G. Davis.)

Mr. Hellenthal: Well, there is another——

Mr. Grigsby: Let him finish his answer, please.

The Court: Go ahead, Doctor.

Witness: You asked me what they meant by generalized epilepsy and I was trying to answer it.

The Court: Go ahead and answer it.

Witness: Now, in trauma or an injury or a violence that is over the motor centers—I am not referring to the frontal lobe area, but where they are in the motor areas, where one has a trauma or an injury at that site, and it has caused an irritation of the motor centers, the origin, or beginning of [90] the attack is in the muscles that are supplied by that area. For instance, if it were in the arm muscle center on the left side the first contracture would be in the right arm. Then it goes to the neighboring centers—to the right of the face and the right leg. Then it spreads to the other side of the body and we have a generalized epilepsy which means there is a generalized contracture of the muscles of the extremities on both sides.

Mr. Hellenthal: Then there is another side of epilepsy you didn't mention—generalized or Jackson's?

A. Jacksonian. That is synonym for traumatic epilepsy. But those all start in the motor areas.

Q. Now, how do you account for this statement in Gray's book:

“It is not infrequently ascertained that epilepsy follows a head injury. Without doubt, many unjust claims have been successfully

(Testimony of Dr. George G. Davis.)

made upon this basis, alleging trauma to be a causation or aggravating factor. Authorities no longer believe this to be very likely unless the injury was quite major, usually with fracture.”

Was there fracture present there?

A. Was there a fracture?

Q. Yes.

A. Certainly, there was a fracture.

“According to Glaser and Shafer, it is possible for such a condition as generalized epilepsy to appear within ten days following major damage. As a general rule, onset is from six months to two years, infrequently up to seven years, and very rarely so long as 20 years later.”

Now, what do you think of Mr. Rowley’s possibilities of suffering from epilepsy in the future?

A. I would say “no,” that [91] he will not have a generalized epilepsy. He might have a petit mal, but he will not have generalized epilepsy because it is not over the motor areas. He will have no contractures.

Q. But he will have petit mal, or there is a possibility?

A. I didn’t say he would. I say, there is a possibility of it.

Q. All right, Doctor, now let’s—what are the possibilities in the future of Frank Rowley suffering from late meningitis?

A. I think they are nil.

(Testimony of Dr. George G. Davis.)

Q. How do you account for the statement in Wechsler's Textbook of Clinical Neurology at page 538 to the effect that fracture through the frontal sinus may result in late meningitis?

Mr. Cuddy: Your Honor, I think the book should be shown to the witness, if he intends to impeach his own witness.

The Court: You may look at the book, doctor.

Witness: Well, I will discuss that if you want, the possibility of meningitis in relation to air coming through the frontal sinus, if that is what you mean.

Mr. Hellenthal: No, I just say this statement: "Fracture through the frontal sinus may result in late meningitis"—what does that mean?

Mr. Cuddy: Your Honor—

Mr. Grigsby: Let him answer.

Witness: There may, if there is an opening from the cerebral—with the escape of cerebral spinal fluid into the frontal sinus, but my opinion in this case—in my opinion he did not have that, any, in my opinion—

Mr. Hellenthal: Now—

The Court: Wait, Mr. Hellenthal, please.

Witness: In my opinion—his temperature is normal [92] today, he has had penicillin, he has had sulfathiazole, and my opinion is there is no infection going from the frontal sinus, from the meninges, and there will not be any subsequent from now.

(Testimony of Dr. George G. Davis.)

Mr. Hellenthal: Now, Doctor, what is the possibility in the future of Frank Rowley dying from the wound that he received?

A. I don't see any probability of that whatsoever.

Q. How do you account for the statement, again of Wechsler at page 538, to the effect that:

“The death rate is high in lesions in the neighborhood of the medulla and frontal lobes?”

A. Well, of course, it is very high in the medulla because that has to do with the breathing, the center of respiration, etc., but I think that the rate is not so high any——

Q. But it is high——

The Court: Pardon me, Mr. Hellenthal. Please let the witness complete his answers.

Witness: I think the rate of death in frontal lobe fractures and injuries is not high.

Mr. Hellenthal: But there is a rate.

A. I suppose there is, but I cannot give statistics, but it is not high. There is always a rate, but it is not a high——

Q. But there is a possibility of death because of a fracture of the frontal lobe or injury?

A. Not per se. It depends upon the complications. You have to have a specific case. You can't just classify all cases under one. You have to discuss your pathology.

(Testimony of Dr. George G. Davis.)

Q. Now, Doctor, what are the possibilities of continued headache in Frank Rowley's case?

A. Of their continuing?

Q. Yes?

A. Well, I think they might continue for [93] some time.

Q. For how long, Doctor?

A. I couldn't put a stop watch on that, but it might be months.

Q. Months? Longer even? A. Yes.

Q. Could it be five years?

A. Well, I wouldn't say.

Q. Could it be ten years?

A. I wouldn't say.

Q. Could it be twenty years?

A. I would believe not.

Q. Now, what is the possibility, Doctor, of vertigo—continued vertigo in the case of Frank Rowley?

A. Well, that vertigo—you are referring to his sensation of—he describes as dizzy?

Q. Well, whatever you think or I might think—vertigo, I think?

A. Yes, and so we can talk the same language, I am saying the word he used as "dizzy". I think he might have that for some time.

Q. How long? Maybe months?

A. I couldn't say.

Q. Maybe months?

A. Might be a few months.

Q. Maybe a year? A. Possibly.

(Testimony of Dr. George G. Davis.)

Q. Possibly five years? A. I doubt it.

Q. But possibly? A. I doubt it.

Q. Now, Doctor, what is the possibility in the future of blindness in the case of Frank Rowley?

A. Of blindness?

Q. Yes?

A. I think there is no possibility. He is already blind in the right eye, but I don't think there will be any blindness that will come from this complication in his left eye.

Q. Now, what is the possibility of insanity, in Frank Rowley's case?

A. I would say that's nil.

Q. Absolutely no possibility?

A. Well, that is my opinion—in his case. [94]

Q. If an infection were to set in in this fractured area, could it result in Mr. Rowley going insane?

A. I don't think infection causes insanity.

Q. Could infection cause a degeneration that might result in insanity?

A. Well, if there is more brain tissue, and we take the word "insanity" to mean in the sense of abnormal mental reactions—not being of normal mental reactions—it is possible that there might be certain infections that could cause—but I see no reason in his case where there is any source of infection that would cause such an irritation of the brain to produce insanity in his case.

Q. If Frank Rowley were to have another brain operation, is it possible that at that operation an infection might set in? A. If he——

(Testimony of Dr. George G. Davis.)

Q. If Frank Rowley were to have another brain operation, could an infection set in at that operation?

A. An infection can set in at any operation.

Q. Could that infection cause his death?

A. If it were severe enough it would.

Q. Could it cause blindness?

A. If it were the type of pathology to produce blindness it would, but I don't know what that would be.

Q. Could it cause epilepsy?

A. If it were of such a nature as to cause irritation of the motor centers, it could cause epilepsy.

Mr. Hellenthal: I have nothing further.

Cross-Examination

By Mr. Grigsby:

Q. Doctor, is this skull fracture an unusually severe fracture?

A. Well, it is a severe case. It is compound, comminuted, [95] with a loss of brain tissue. That is just what it is, but it is not an uncommon case. I mean, we see them frequently. I, myself, have had experience with similar cases. I would say several hundred. I have, myself, operated on a great many—would say several hundred cases, not in the frontal region alone, but skull fractures, some of them in the frontal region. As to the effect of this experience this man has gone through with respect to the criminal proceedings, and the pendency of this civil litigation, I think that makes him intro-

(Testimony of Dr. George G. Davis.)

spective, and worry about his case, which is a psychological but not an anatomical reaction. I think that he would observe himself more acutely.

As a result of that physical examination I made day before yesterday, eliminating the subjective symptoms—that is of what he feels that an examining person cannot very well evaluate—I find that there is practically no loss of function. I do not see any loss of function that the man has. I would say he is in good condition. I heard Doctor Romig's statement to the effect that the man is getting worse in recent weeks. I think that there has in all these cases—I have noticed in litigation in corporation cases for 17 years, where a man is coming up for trial, that he has a very definite reaction either subconsciously or consciously, where he is introspective and he analyzes his subjective symptoms very carefully; and frequently, particularly if the case comes to a conclusion, if the patients are relieved from this introspective reaction, then I think their mental reaction greatly improves from a mental point of view.

Mr. Grigsby: What in your opinion, from your diagnosis and what you know about this case, as to the best thing to do with this man right now?

A. Well, I think one of the healthiest [96] things for this man right now is the termination of this case, and for him to get back into what would be the approach to a normal life. I mean by that to start to do work.

(Testimony of Dr. George G. Davis.)

Redirect Examination

By Mr. Hellenthal:

In 1943 just prior to coming to Anchorage I practiced surgery in Chicago and taught surgery in Cook County Hospital. I did not come immediately from Chicago to Anchorage. I came to Bristol Bay; landed there the 1st day of June, and if my memory serves me correctly, left there the 7th of August. I was employed in Bristol Bay with the Naket Packing Corporation, at Nakine on Squaw Creek, in the capacity of surgeon. It was at Nakine across from Koggiung.

And thereupon,

FRANK ROWLEY,

having been heretofore duly sworn, and testified in his own behalf as follows:

Direct Examination

By. Mr. Hellenthal:

My name is Frank Rowley. I was born in Grand Valley in Colorado, on February 7th, 1905. I am 41 years old. I went through the 8th grade school at Grand Valley, Colorado. Also went to Trade school; it was I believe in 1924 in Kansas City. The Finley Engineering College—I went there approximately a year. It was a school that taught electricity and general practice. It was a night school. I worked days and went to school at night.

(Testimony of Frank Rowley.)

Q. Now, Frank, what did you study at that school again?

A. It was the practical work—the practical workings of electricity. Well, just a practical school. In the early part of my life after I left the Eighth Grade I worked in the orchards some in Colorado until I was approximately 17 years old. Yes, I lost my right eye when I was 13 years old,— [97] that is, I injured it when I was 13, and the eye was removed when I was approximately 18. After working in the orchards I took up work from day to day, just ordinary work as you do through your life to make a living. After leaving the orchard work I took up electrical work. My first job was working in a shop in Kansas City. It was an independent electric machinery company. It was a big shop there. They done all kinds of repairing, and repairing of the motors and re-winding. I started out with that company just as a helper, just general cleaning up and doing squaw work—light work. After I left that organization I was winding motors. I spent three years at that work in Kansas City. I think it was '22, '22 and '23. Before going to Kansas City and before leaving the orchard work I worked for the Denver Tramway for a while; of course that was just common labor,—that is in Denver, Colorado. When I was working in Kansas City for those three years I started at 25c an hour—and when I left there I was getting 75c. I went from there to Chicago. In Chicago I worked for the Gregory Electric. I

(Testimony of Frank Rowley.)

was working in the transformer department winding transformers, mostly old ones—re-winding and repairing. I was there approximately six months. Then I went to Wichita, Kansas—worked there for Kansas Gas and Electric Company, repairing transformers. That consisted of taking transformers apart and cleaning them up and sometimes replacing some of the wire in them—the coils—and down in that country where they got lots of lightning they had a lot of breakdowns and it was repairing breakdowns. I was approximately three years with Kansas Gas and Electric Company. Those years were '25, '26 and '27. While working there I made approximately \$150 a month, an average figure. I believe I started at \$125; when I quit I was making \$175. After working there in Wichita [98] for the Kansas Gas and Electric Company I went to Colorado. I worked for the Great Western Sugar Company out of Denver for about two years. That was general electric work—practically every line of electrical work. Well, it is some wiring, and some motor repairing—repairing motors, and trouble shooting. I made around \$150 a month on that job. After that I worked in ore mines down in New Mexico in a little town called Magdalena—followed electrical line there, general electrical work. It was working through the mines, and also in the shops and power house—it was general electrician. On that job I made approximately \$175 a month and board. I believe that was in '27 and '28. It may have been later than that. After leaving Magda-

(Testimony of Frank Rowley.)

I went to California. I worked around Fresno, California, for the Southern California Edison. That was general construction work. They was building dams and tunnels and such for power houses north of—I made around \$175 and board at that job. Worked for the Southern California Edison Company approximately six months. From there I went back to Colorado, and from there hired out at a place at Casper, Wyoming. I worked for a small outfit there winding motors to start out with. I worked for them a couple of years and then I started my own place. My own place of business, winding motors, repairing and winding and rebuilding motors. I was in Casper working for others and myself from '32 to '38. During that period I made approximately \$200 a month. When I was working for wages I made \$150 a month, and when I was on my own entirely I averaged around \$200. I came to Alaska in 1938 from Casper. When I first came to Alaska I done some truck driving, and done common labor—well, practically anything I could find for the first couple of years I was here. I got [99] that scar that I mentioned yesterday on my head outside of Kansas City in a car accident. The car ran off the road and turned over and I cut myself on the glass. I got a glass cut. There was no fracture—just a glass cut. After I was driving a truck and done common labor I worked for McCarthy Brothers on this Federal Building. I worked with them clear through the job from the start to the completion. That was

(Testimony of Frank Rowley.)

about a year and a half. On that job I did everything. I started out as common laborer, and I worked through the whole job. I fired the boilers to heat the building while it was under construction. I did very little electrical work. I got approximately \$225 a month on that job. I was injured while on that job. I slipped on an icy runway and got a hernia on the left side. I could not tell what kind of a hernia. There is a scar from it, yes. There was an operation performed. It took me approximately three months to get over that hernia operation. When I got over it I went back to work for the McCarthy Bros., the same outfit I was working for when I got the hernia, and then finished the job with them. After that job was completed I done a little electrical work around town here, and then I went to the Matanuska Valley and worked on the REA—Rural Electrification—at Matanuska and Palmer. I had a contract with them for putting in some electrical equipment. I got that on a bid. I bid approximately \$3,000. The job was installation of meters—meter services, throughout the valley. I was on the job approximately—well, the shortage of materials and things—it run over about two years—almost two years. While I was doing that I did house wiring and general electrical work over the valley. I was at Palmer approximately one and a half years at first, then I [100] had to go back late and finish up the job as the material come in. That was the fall of '41 up into the winter of '42. I

(Testimony of Frank Rowley.)

made \$300 a month on the average during that period. After that job was finished I went to work for the City of Anchorage; that was general electric work; a lot of times I read meters, sometimes repaired transformers, and I did a little line work; it was just general electric work—they would define it in some outfits—just different work; all kinds of electrical work. I made approximately \$350 a month at that work. Worked for the City of Anchorage two years, '43 and '44. After that work I went out to the Post and worked for the War Department from that time up to the time of the injury. I started there around the first of the year 1945. I worked in the motor repair shop; they repaired electric motors. My job was classified as Electric Motor Repairman. That work consisted of lots of times just repairing motors—maybe putting in bearings, and from there to re-winding and putting in a new winding. It was motors—lots of them were often ventilating fans, and, oh, they have, I think, 11,000 motors out there through the Post and they was all shapes and sizes and for different causes. There were big motors, a hundred horsepower I believe is the biggest motor I worked on out there. It weighed about 1500 pounds. There were others down to very small ones. In repairing a motor you have to take it apart and if it is a burnt out motor you have to take out the old winding and put new insulation in it, and make new coils and assemble the coils, and connect it up the way it was. You have to know something about a

(Testimony of Frank Rowley.)

lot of different kinds of motors for to do that. There are hundreds of different kinds. They have every [101] kind of motor that is made out at the Post. I made \$245 for two weeks—as high as \$245 for two weeks—about \$450.00 a month. It varied some in different months. Soon after the war they cut us down to—well, for a while we went to a 40-hour week, and of course that cut it down considerable—cut down the average. I was paid \$1.71½ an hour when I started at the Post, and when it ended \$1.75 an hour.

(Witness is handed a paper marked “Plaintiff’s Exhibit No. 124” for identification.)

Witness (Continuing): That is my payroll statement for 1945 (paper admitted in evidence without objection). Witness continuing: I made \$5152.90 in 1945; that was gross before deduction of taxes, etc. I was making approximately \$400.00 a month in 1946. On top of that we got 26 days annual leave and 15 days sick leave. That figure of \$5152.90 does not include that—you get that additional. I have taken that. I took that time last summer when I was working at Mountain View. I took 24 days I believe of annual leave for working. I stopped work at Fort Richardson about the 1st of July, maybe the 10th. Don’t know just what day. I took leave to do some work at Mountain View. I was putting in an electrical distribution system there. I started figuring on it approximately the first day of the year and I had done considerable

(Testimony of Frank Rowley.)

work on it and I got a couple of Diesel driven generators from the surplus property office. They were generators for generating electricity—Diesel driven, two of them, capacity 40 KW each. I had poles and materials for building lines out there. I had poles and cross arms and general material for building lines. I had around 30 poles around the 1st of July. I was putting up the poles in the month of [102] July. I dug the holes then I had to have a crane from town go out and lift the poles in the holes. That was in the month of July. Those poles weighed up to 500 pounds. They are regulation electric light poles 35 feet long. I was getting up this electric distribution for the public out there—for the residents of Mountain View. There were approximately 100 dwellings. I had contacted the people and taken a survey of the Mountain View district in the month of May while I was working at the Post, after working hours. After working hours during May of the spring of 1946, in connection with that power plant, I done a lot of preliminary work. I dug holes after I went home from work at the Post. I did general—just everything, in connection with that project. I went to see people to subscribe to take my power—had them sign up. I came and saw you about it some time in May, to draw up a contract. I had about \$5000 of my own money in that business—I cannot say how much labor. I have everything I got in that business. It is paid up. I was going to start that business like an ordinary utility company would.

(Testimony of Frank Rowley.)

I figured on putting in meters and charging so much a KW hour. I planned to have it in operation about the 1st of September.

I am married; was married in '33 in Douglas, Wyoming, and still married to the same woman. I have 5 children—the youngest is Raymond Rowley, age 3 years; the next boy is Franklyn, age 8; then Alleen, age 9; and Billy Ann, her age is 11; and Effa, her age is 12. My wife has never worked. I live at Mountain View, known as East Anchorage. My house out there is more or less under construction. I have one big room and three rooms under construction, but this cold weather I have blocked off and we are using just one room at present. My whole family lives in one room. [103]

(Witness is handed Plaintiff's Exhibit No. 125 for identification.)

Witness, continuing: That looks like a statement from the hospital—Providence Hospital. The amount shown on that is \$744.25, the date December 9, 1946. My name is not on it. The name of Z. E. Eagleston is on it. This is for services performed on me. It says: "Rendered Mr. Frank Rowley." Paper admitted in evidence as Plaintiff's Exhibit No. 125.

Witness, continuing: Since I left the hospital the doctor told me it would be all right if I done light work, but not to go beyond what I felt like I should do. I have done some work since I got out of the hospital. I believe I was in the hospital

(Testimony of Frank Rowley.)

29 days. I have done very little work since I got out, consisting of fixing up around the house. I had work around the house banking up and getting the air out from under the house for the winter, and things of that kind. I did nothing in connection with my power plant business or distributing business. I have hired a little in connection with that as far as I could. I hired a man around the first of September. When I was in the hospital there was one of my generators—one of the motors on one of the generators my friends had taken apart and figured to overhaul it, and he had taken it apart and he got sick and wasn't able to put it back together, and it was in Ken Hinchey's place of business, and I hired a man to put that back together, and Ken Hinchey wanted it out because he wanted the space, and I hired a man there to put the machine back together so I could get it out and got it back to Mountain View. I paid him wages about \$70.00. There is no [104] other work I have done outside of fixing up the basement and fixing the house since this injury. I can't do any lifting—I have—that is absolutely—I have tried to do so, but I can't do it, that is all.

In connection with my distributing system I used to climb up telephone poles. I have not done that since this injury. I do not think I can do it. I would not want to try it. I have considerable headaches now which, at points, right at the point of the injury, and if I get over tired why that gets greater. The best thing I find to do when

(Testimony of Frank Rowley.)

I get tired is to go lay down and rest for a while. I do that when I get a headache. Sometimes the headaches come on quite frequently, maybe three or four times a day at most, and other times I will go maybe a day without one. That is about the longest I have gone without a headache—a day. I have other things that bother me. I have ringing of the ears. My ears ring considerable. Sometimes it will come on and last several hours, and other times it may be a day or so without any ringing of the ears. I get dizzy spells. I feel off balance at times. It just lasts a few minutes at a time. Maybe—oh, sometimes it will happen twice a day and then sometimes it will go two or three days without.

It hurts my head to concentrate. I can't—if I concentrate, why, my head gets to hurting and I just can't—I just can't concentrate. I don't remember of anything else right at this time. Sometimes I don't sleep well at night. I don't sleep at all at night, and then when I do go to sleep my—I have dreams—I have dreams—I have bad dreams—dreams that you don't like to have—oh, people chasing me with guns and everything, and I wake up in a cold sweat and—between times I feel pretty good. There is times that I feel good. I don't feel like I could go back to [105] my regular work at the Post, because I could not do any lifting, and I do not believe I could stand eight hours standing up to bench working. I don't believe I could anyways near stand it.

(Testimony of Frank Rowley.)

(Document offered and admitted in evidence marked Plaintiff's Exhibit 126: Witness handed Exhibit 126.)

Witness, continuing: That is a Withholding statement for 1945 and 1946. It shows my total wages for 1945 to be \$5152.90 for the period January 1st, 1945, to December 9th, 1945. For 1946 it shows \$3395.05, that is from 12/10/45 to 9/15/46.

I used to fight a little when I was a kid. As far as—since then I never have done any fist fighting. I think I have always tried to avoid it.

I have earned nothing since this injury on the 30th day of July. I received a check for reporting to the Jury about ten days ago. That is all I have earned.

Prior to this injury I used to work in my spare time and after hours on my power plant. Since this injury I have not been able to do as much work as I did in my spare time prior to the injury.

Cross-Examination

By Mr. Grigsby:

I stated after I had been advised by my physician to be careful not to overdo any work I might attempt. I followed that advice. I have, however, done some light work around my house, banking it up. I did not use a wheelbarrow. I have never used a wheelbarrow since I got out of the hospital that I know of. I had a man use a wheelbarrow

(Testimony of Frank Rowley.)

for me. I did not use it myself. That man's name was Burke. That was somewhere in the middle of September. I did not attempt to use [106] the wheelbarrow in connection with banking my house. I did not try to. I did not build a scaffold around my house. I had a man bring one to the house; he put it up. I took no part in it. I did not do any work with reference to peeling logs. I can't do any lifting. I just can't do it. I know what peeling logs is. I never did any of that since the injury. I had a man hired for a few days peeling logs. I did not do any of it myself. The man I hired was a soldier. I paid him with a check; he was an ex-soldier, and I would have to look on the check to tell you his name. I have not undertaken to climb poles at any time since the injury. At the present time I feel that I would not care to do anything like that. I have not tried to climb poles because I do not feel like doing it. I have refrained from attempting any lifting on account of the advice of my physician. He advised me not to do any heavy lifting.

Those amounts of my earnings in '45 and '46 include overtime for both years. I did considerable amount of overtime. I would not be able to state from the exhibits what proportion of overtime. That would have to be figured out.

And thereupon,

ALBERT HENRY DYER,

being first duly sworn, testified for and in behalf of the plaintiff as follows:

Direct Examination

By Mr. Hellenthal:

My name is Albert Henry Dyer. I am a cement finisher. I have been around Anchorage for 18 years; in Alaska 23 years. I know Frank Rowley; have known him for four or five years. I know Mr. Rowley's habits with respect to industry; that knowledge is based upon my own observations. His habits as to [107] industry are good. He is a steady, dependable man. I know his habits as to sobriety; they are good. I mean that he is not a total abstainer, but that he is also not a habitual drinker. He is a sober man.

: And thereupon,

FRANK ROWLEY,

recalled, having been heretofore duly sworn, testified as follows:

Redirect Examination

By Mr. Hellenthal:

I have suffered much pain at the time of this injury and since. The first two or three days in the hospital I do not remember a whole lot what took place. There is a few instances that I do

(Testimony of Frank Rowley.)

remember but I—I do not remember but very little the first three or four days, and then I seemed to gradually get better, but my head hurt and mostly—well, it hurt until I got out of the hospital, and then it hurt mostly when I tried to do any thinking or anything. I couldn't do very much thinking. It was best to relax. I always felt better when I really fully relaxed, because when I get in a strain or try to think, why, I get severe headache, and that hurts.

Q. Now Mr. Rowley, have you given much thought to your future?

A. Well, it worries me to——

Mr. Grigsby: If the Court please, we object to this line of examination as immaterial to the issues set up in the complaint. There is no claim for anything except loss of capacity to labor and pain and suffering, and the complaint contains no claim for damages for mental injury whatever except, of course, what would be inferred as affecting capacity [108] to work, but his thoughts for the future I think are immaterial.

Mr. Hellenthal: Your Honor, I am introducing this under the complaint—to prove mental suffering.

The Court: Objection overruled. You may answer.

Witness, continuing: Well, the future does worry me to a certain extent because I have a large family and—but I try to keep from worrying as much as I can because it don't do me any good, because worry is the worst thing I can do for my health, I figure.

(Testimony of Frank Rowley.)

In approximately the middle of September I had a man helping me—well, I had him doing the heavy work, and there was a time when I borrowed a wheelbarrow from the neighbors and I generally went and got that wheelbarrow and took it back in the evening. It was empty. I have not at any time wheeled a loaded wheelbarrow, at no time since this injury. I might have stood by a wheelbarrow, or been in the vicinity of one. That same observation applies to peeling logs, or the other things mentioned by Mr. Grigsby.

And thereupon,

NORMAN C. BROWN,

being first duly sworn, testified for and in behalf of the plaintiff, as follows:

Direct Examination

By Mr. Hellenthal:

My name is Norman C. Brown. My occupation is publisher of a newspaper, the "Anchorage News". I have been publishing that paper for the past year. I know a man by the name of Slim Eagleston; have a speaking acquaintance, I would say. I do not know much about his reputation.

Q. Do you know Mr. Slim Eagleston's reputed wealth?

Mr. Grigsby: We object to that, if the Court please, it is immaterial; it is not the proper method of proving financial resources.

(Testimony of Norman C. Brown.)

The Court: Well, you may ask the question anyhow upon that, and a pro forma ruling will be made only upon the evidence, and if the Court feels that it is inadmissible at a later date, it will not be considered.

Witness, continuing: I know Slim Eagleston's reputed wealth no more than most other acquaintances, I imagine, in Anchorage. I know he has assets. He has assets that I know of, just as everyone else knows Mr. Eagleston knows he owns property building—he owns a store, and that's all. As far as a bank account, I don't know anything about it. I would say he has a reputation for having some money. It was that reputation I had in mind when I wrote an editorial.

Mr. Grigsby: Wait a minute. We object as to what he had in mind when he wrote an editorial.

The Court: Overruled.

Cross-Examination

By Mr. Cuddy:

I do not know of my own knowledge as to the wealth of Mr. Eagleston, except just what is apparent. He does owe some money, yes. I know he owes money. I do not know what his net worth is.

And thereupon,

GEORGE PETERSON,

being first duly sworn, testified for and in behalf of the plaintiff as follows:

Direct Examination

By Mr. Hellenthal:

My name is George Peterson. I am electrical superintendent [110] at the Post Engineers at Fort Richardson. I know Frank Rowley, have known him since the early part of 1945, since around May of 1945. He is classified as a shop electrician. I was his superior, since May, 1945. His principal duties are repairing motors, rewinding motors, that would include generators, transformers—they would be the principal items. Mr. Rowley's work involved complete repair of motors and that would be checking motors and generators, transformers, for defects and correcting those defects; any rewinding that was necessary. In other words, taking the motors as they were when they were not working and putting them in good shape. That refers to all shapes and types and makes of motors. At the Post we have small motors that run from about 1/32 horse on up to a hundred horse, and practically every make that is put out at the present time. Those different makes vary very considerably as to their requirements as to winding. The same applies to generators and transformers. A hundred horsepower motor would weigh

(Testimony of George Peterson.)

14, 15, 16 hundred pounds. Mr Rowley's work, from my observation and knowledge, involved expenditure of much energy and heavy work. Any motors that—transformers, anything he was working on—in taking those apart there are some pretty heavy parts to handle in them. He would be probably be handling heavy work about every day. The motors we get into the shop are in there for some defect. That requires it to be taken apart, checked over, that the old windings be removed, then re-wound with the proper winding which includes quite a bit of figuring as far as sizes of wires, and so forth, are concerned, and then insulated properly and replaced and checked, and properly installed after they are completed. It requires much prior knowledge; it takes quite a bit of experience on that. It requires the exercise of judgment and discretion in searching for defects in motors, generators and dynamos; it requires much knowledge because it requires the use [111] of various types of meters and the calculations that go with them. I have known Mr. Rowley since May of 1945. I have had occasion to observe him very closely during that time. He has been working there during that time. He has been a steady man on the job. He has been off very few days and they were various legal excuses, sickness, etc. He has been sober every day he has been on the job and that has been practically all the time. I know something of Mr. Rowley's Mountain View dis-

(Testimony of George Peterson.)

tributing system. I have seen it once or twice. He had two generators set up there at Mt. View. He had one running the last time I had seen it. He had overhauled that one completely and he was working overhauling the other one. He had a few poles set on the pole line and some wires strung.

Mr. Grigsby: We would like to have the same objection, your Honor, to all this line of testimony that we made to the examination of Mr. Rowley.

The Court: Very well, objection will be noted to the entire line of testimony.

Witness Continuing:

As to the kind of plant he had, there were two caterpillar diesel generators. I believe they were caterpillars, and they were both 50 KW's. He had both generators set up under cover at the time I had seen it. I wouldn't say as to how many people would take juice from Mr. Rowley's plant if it were in operation. I would have to know more the layout of the wiring, and so forth. I was out there and saw Mr. Rowley working on overhauling his motors. He had one of them that was installed and running. The other one he had off the motor and had one of the end belts off the generators. That is heavy work. I couldn't make a guess as to how many poles he had up out there.

And thereupon,

ROSE WALSH,

being first duly sworn, testified for and in behalf of the plaintiff as follows:

Direct Examination

By Mr. Hellenthal:

My name is Rose Walsh. My official duty with regard to records is recording records of mortgages, deeds, bills of sale, etc., in the Commissioner's Office for the Anchorage Precinct. I am the U. S. Commissioner and ex-officio recorder for the Anchorage Precinct. (Witness is shown a book.) This is Book 53. It is a book in which we copy the mortgages and other instruments like that—real mortgages. There is a mortgage in that book entered into between Z. E. Eagleston and L. McGee. It is found in Book 53, beginning at Page 325. The principle is \$48,000.00. This is a real and chattel mortgage.

Mr. Grigsby: I would like to have the purpose of this evidence stated. I believe it is stated it is a mortgage of Mr. Eagleston as mortgagor to Mr. McGee. What is the materiality of the testimony?

Mr. Hellenthal: To show the actual and reputed wealth of the defendant.

Mr. Grigsby: Object to it as incompetent for that purpose. The fact a man borrows money—

Mr. Hellenthal: If it please the Court, only a wealthy man can borrow \$48,000.

(Testimony of Rose Walsh.)

The Court: That is a matter for argument. Certified copy of it may be admitted. If counsel wishes to summarize it now he may.

Mr. Hellenthal: This is a mortgage entered into between Z. E. Eagleston and L. McGee. The sum is \$48,000. It is dated the 4th of November, 1946, signed by Z. E. Eagleston in the presence of Shirley West and W. N. Cuddy; sworn to before Mr. Cuddy. It is in proper form. It is a chattel and real mortgage. It [113] encompasses all the whole of lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of Block 26-C of the subdivision of the South one-half of block 26 of the East Addition; all of Lot 11 in Block 45 of Anchorage; all of Lot 9 in Block 47 of Anchorage; all of lot 8 in Block 4-D of the Third Addition of Anchorage; and together with all the chattels and everything attached thereto. Chattel mortgage covers all the buildings located on Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of Block 26-C of the East Addition; two buildings 20 by 120 feet by dimensions; one Pacific Hut 16 foot by 36 foot in dimensions; one large dwelling house; a merry-go-round; one double loop-o-plane, and all lumber and building materials located on the premises; all buildings located on Lot 11 in Block 45, on Lot 9 in Block 47, and on Lot 8 in block 4-D of the Third Addition; one 1941 Buick sedan; one Chevrolet truck, half ton, 1942 model; one 1941 Dodge sedan; one 1941 GMC stake truck; all refrigerators located on Lot 11 of Block 26-C. A note secured by the mortgage—the note accompanies the mortgage in

(Testimony of Rose Walsh.)

the sum of \$48,000 bearing interest at eight per cent. Aside from that the mortgage is in the usual form.

And, thereupon,

R. S. RICHARDS,

being first duly sworn, testified for and in behalf of the plaintiff as follows:

Direct Examination

By Mr. Hellenthal:

My name is R. S. Richards. I live at 905 Fourth Avenue. My business is electrical contracting. I have known Frank Rowley for approximately four years, have had a good chance to observe his habits as to industry. He was with us in motor re-wind work for approximately a year and a half. I saw him every day during that time. That was in '43 and part of '44. He was about as steady a man as I ever saw. I have never seen him [114] intoxicated in my life. I know Slim Eagleston's reputation as to wealth. He is a man of considerable wealth. His reputation as I heard it is, he is worth a quarter of a million dollars.

Cross-Examination

By Mr. Cuddy:

Other than what I observe, I don't have any access to any of his personal affairs, of course. I do not know what he owed. I have just overheard conversations of other business men and things of that nature, not with Mr. Eagleston.

And, thereupon,

A. H. DYER,

having been heretofore duly sworn, resumed the stand and testified further in behalf of the plaintiff as follows:

Direct Examination

By Mr. Hellenthal:

I know Slim Eagleston just by sight. I know his reputation as to wealth—that I have heard on the street and so on; that his reputation is approximately \$250,000.

And thereupon

ROBERT RISLEY,

being first duly sworn, testified for and in behalf of the plaintiff as follows:

Direct Examination

By Mr. Hellenthal:

My name is Robert Risley. I run my own vulcanizing shop. I know Frank Rowley; have known him since about 1941. I used to live next door to him in the Matanuska Valley and have been closely associated with him in Anchorage. We both belong to the same lodge. I know his habits as to industry. He has always been a good hard worker. I know his drinking habits. He possibly takes a drink occasionally. I would classify him as to drinking habits as not bad. [115]

(Testimony of Robert Risley.)

Cross-Examination

By Mr. Grigsby:

I am a brother lodge member with Mr. Rowley. That is the Moose Lodge. I know Mr. Richards who was on the stand a few minutes ago, R. S. Richards; he is also a brother Moose, and Mr. Dyer who was just on the stand is also a brother Moose.

Further Direct Examination

By Mr. Hellenthal:

I know about this Mt. View distributing plant that Mr. Rowley has. I know that he has worked hard in getting it organized, but through circumstances he is unable to continue. He has two diesel plants. The completion of his distributing system was interrupted at the time of his injury. Off hand I do not know how many customers Mr. Rowley had lined up for his distributing system, but I believe every resident in Mt. View community was going to secure power from him.

Cross-Examination

By Mr. Grigsby:

I live there in Mt. View myself.

And, thereupon

HUGH DAUGHERTY

being first duly sworn, testified for and in behalf of the plaintiff as follows:

Direct Examination

By Mr. Hellenthal:

My name is Hugh Daugherty. I am an agent for the New York Life Insurance Company. I have been in the business approximately ten years. I have taken several courses that my company offers and correspondence courses in insurance. I am familiar with tables of expectancy and annuity tables. I have had a great deal of experience in actuarial data and in gathering it and interpreting it. The life expectancy of a man aged 41 years is $27\frac{1}{2}$ years. I get that information from the American Experience Table of Mortality used by all the major insurance companies in figuring expectancy. I have that table with me. That data is in the lower right hand corner of page 231. This book is the New York Life Insurance Company rate book. That is a book that most insurance companies and insurance men have. It is the agents' table of all rates, experiences, mortalities, interest—it is the one book we use constantly in our work. It is the history of millions of policy holders throughout the United States.

Q. Now, Mr. Daugherty, based upon the actuarial tables and the annuity tables and the ex-

(Testimony of Hugh Daugherty.)

pectancy tables and the combined expectancy tables and annuity tables found in the book that you have just referred to, how much would it cost a man 41 years old to buy an annuity policy—or rather, let me rephrase that; What is the present value of an annuity policy that will bring \$400.00 a month to a man aged 41 years, for the rest of his life?

Mr. Curry: We object, if the Court please, immaterial, and there are also many other factors that enter into such a situation—the cost of insurance—we don't think that it's a fair basis for the issue here.

Mr. Hellenthal: Again the United States Supreme Court follows the mortality tables and the actuarial tables and the expectancy tables in determining the present value of the loss of future earnings of a man injured in an accident or injured by the violent actions of some other individual. I have the cases, your Honor, if you desire to see them.

Mr. Grigsby: Your Honor, the objection wasn't as to the competency entirely, but the question is, "for the rest of a man's life" and there is no evidence in the case that says that this man can earn \$400, or could have if he wasn't injured, for the rest of his life. That was his earning capacity at the age of 41 years. There is nothing in these tables that pertain to how long he can [117] *that* from which any inference can be drawn that he will continue to earn it in extreme old age—80 or 90 or 100 years old. That hasn't anything to do with the measure of damages here in this case.

(Testimony of Hugh Daugherty.)

Mr. Hellenthal: Mr. Daugherty testified he had the combined life expectancy and annuity tables and I am prepared to bring decisions exactly in point with the United States Supreme Court holding this rule of damages is proper, and that such evidence, although not conclusive, is very, very valuable.

The Court: Of course, the American Tables of Mortality are universally received in evidence in every court for what they show. How far we can go upon—or how far any decision can be based upon the testimony sought to be elicited by the last question is a thing I am not able to answer now, but in order to speed the trial and get the evidence before the Court in the shortest possible time the objection will be overruled and the witness allowed to answer. Pro forma ruling will be given. You may proceed.

Mr. Hellenthal: What is the present value of an annuity which will bring \$400 a month to an individual 41 years old, based upon his life expectancy and upon the annuity tables and the interest tables that you have in your guide?

A. All right: \$400 a month based on age 41 for the balance of a man's life is \$122,892. That means that if that sum of money were given to ours, or to any annuity company like ours, that the annuitant—the person receiving the money—would receive \$400 for the balance of their natural lives. That figure is everything considered—present value of the annuity.

(Testimony of Hugh Daugherty.)

The Court: In other words, as I understand, in order to guarantee to pay a man \$400 for the remainder of his natural life, if that man is in good health, we will say, at the age of 41, your company would require to have paid into it \$122,892?

Witness: That is correct.

Witness (continuing): [118]

That is an average man. That is based on extensive tables and facts that have been gathered over a period of many years by insurance companies.

To bring \$200 for the rest of a man's life, age 41, the present value of an annuity is simply a mathematical equivalent; it would be simply half of the figure, or \$61,446. To bring \$300 a month, it would be \$92,169; \$100 a month would cost \$30,723. It is difficult to answer whether insurance companies make a little money on these annuities. If you are speaking of the agent, yes. The average agent's commission on the sale of a \$122,000 annuity policy—you are asking what would the agent—myself, for instance—get for placing such a contract and receiving that money? It will vary. I don't believe it would go under half of 1% and if an agent received 2% of a sum like that, I would say that would be the ceiling in commission for him—somewhere between a half of 1% and 2%. I would answer that the profit on that \$122,000 would be a very small amount, either for the salesman or the insurance company.

(Testimony of Hugh Daugherty.)

It is a very hard question to answer yes or no, whether there are cheaper annuity policies than those sold by the New York Life Insurance Company. If there would be a difference in rate, it might vary as much as 1% on the total cost, which is very small, but the variance would be very slight.

Mr. Hellenthal: Now, Mr. Daugherty, I would like to have this book and I offer it in evidence, subject to objection by the defense.

The Court: Is there objection?

Mr. Grigsby: We have no objection to the Court referring to it if he finds it material.

The Court: Well, it may be admitted, then——”

(Book referred to in testimony of witness admitted in evidence and marked Plaintiff's Exhibit No. 127.)

Mr. Hellenthal: Now, Mr. Daugherty, could a man who had suffered a compound, compressed, depressed fracture of the skull obtain life insurance?

Mr. Curry: We object, if the Court please. The witness hasn't qualified yet as any expert to pass upon the subject; and it is immaterial.

The Court: Objection overruled. [119]

Witness: I would answer that “No,” that there would be no possibility of that man obtaining insurance.

And, thereupon,

ROBERT RISLEY

having been heretofore duly sworn, resumed the stand and further testified as follows in behalf of the plaintiff:

Redirect Examination

By Mr. Hellenthal:

I am a friend of Mr. Rowley; a pretty good friend. I have seen him on an average of two or three times a week for the last couple of years and have spent much time with him on those occasions.

Mr. Hellenthal: Mr. Risley, have you noticed any change in Mr. Rowley since this injury that he received on the 30th of July?

Mr. Cuddy: We object, if the Court please. The witness has not shown that he is qualified to judge along such lines and the question too broad.

The Court: Overruled.

Witness: Yes sir, I have. I have noticed that whenever I am speaking to him, sometimes I have to repeat either a question or a statement that I have made. I cannot recall having to do that before this injury. He doesn't seem to be the same.

And, thereupon

A. H. DYER

having been heretofore duly sworn, resumed the stand and further testified for and in behalf of the plaintiff as follows:

Redirect Examination

By Mr. Hellenthal:

I am a pretty good friend of Frank Rowley's. Until the time of this injury, I would say I met him two or three times a week. Since this injury, I have observed mental traits in Mr. Rowley that were not present before the time of the injury. I don't know just how to explain it, but his mind seems preoccupied. [120] He is not as alert—as quick. If spoken to, sometimes he hesitates for a little before he answers, the same as if he didn't hear it. I have only observed that lack of alertness. Just the other day I walked up the street with him and I noticed that he didn't pay the proper attention to traffic—that he stepped in front of a car, and it was quite evident that the car was there. It was easy to see; and I at that time noticed it.

And, thereupon

MRS. FRANK ROWLEY

being first duly sworn, testified for and in behalf of the plaintiff as follows:

Direct Examination

By Mr. Hellenthal:

My name is Vena Rowley. I am married to Frank Rowley. He is 41 years old. At the hospital, following Mr. Rowley's injury, I observed mucus coming from his nose. I saw there was mucus and blood from both his nose and throat. That condition persisted three or four days after the injury, if I remember rightly. I saw it. I spent nearly all my time at the hospital during those three or four days. When there was no special nurse I stayed during those hours. I remember him signing something but I don't remember what it was. I did not see it. With regard to Mr. Rowley's mental state being different than it was prior to this injury, I notice he responds more slowly when he is spoken to. He seems to take longer thinking, any answer to the children's questions—he seems to be hard of hearing. I did not notice those things before the injury. He just seems slower and harder to draw his attention.

And, thereupon, over objection as to materiality, it was stipulated that the plaintiff made a will three days after the injury.

Mr. Hellenthal: The plaintiff rests.

And, thereupon, [121]

L. McGEE

being first duly sworn, testified for and in behalf of the defendant as follows:

Direct Examination

By Mr. Grigsby:

My name is L. McGee—Lanius McGee. (McGee is shown plaintiff's Exhibit No. 127, being a real and chattel mortgage from the defendant Z. E. Eagleston to witness, dated the 4th day of November, 1946, and being a mortgage for \$48,000 on the real and personal property listed in the mortgage.)

Witness continuing:

I loaned that sum to Mr. Eagleston on that date. I gave him checks representing cash.

Q. Will you look over that list of real property? The real property listed under the head of real property?

A. Yes, I understand. Yes sir.

Witness continuing:

I have been in Anchorage about 19 or 20 years. I am, to some extent, familiar with the value of real estate. I had seen that property and know where it is. With reference to the chattels listed, I am not familiar with that. I am not too familiar with that, no. When I made that loan, I did not make it as a business loan, fixing the amount that I was willing to loan entirely on the value of the property. I took into consideration the fact that

(Testimony of L. McGee.)

I had loaned Mr. Eagleston money before. Without security. On one occasion with security also. I had not loaned him large amounts without security, as compared to this amount. The most he has owed me in the last couple of years without security—his indebtedness to me for cash given him without security, except his personal note, has been in the neighborhood of \$17,000. In making this loan, I took the fact into consideration that he would have to work it out of the junk and the supplies, etc., that he has [122] bought there. I might state that the \$17,000 was loaned when he purchased Anderson's Camp, which was a lot of junk and I still understand is out there yet. In a general way, the value of that junk will be determined by what he can get out of it by selling it. That is by, you might say, farming it out, or waiting until a customer comes along and wants to buy it. I don't know what I would pay for it in one lump sum right quick. That is a pretty hard question. I would not loan very much money—not a substantial sum of money on all that junk outside that real estate. Not if I had to handle it. I would not loan very much.

Mr. Grigsby: Is that personal property now—where it lays now—without regard to the bestowal of it by a man familiar with that business—what would you consider it worth, as it lays there today?

A. That is all the pieces of property that's included in this mortgage. you mean?

(Testimony of L. McGee.)

Q. No, all the junk—all the personal property.

A. Not the real estate?

Q. All right, take it all.

A. Everything right straight through?

Q. Yes.

A. What you mean is put it up for auction—
under the hammer, on sale, and sell it right quick?

Q. Market value.

A. I would figure it was worth around \$35,000.

And, thereupon

Z. E. EAGLESTON

being first duly sworn, testified in his own behalf
as follows:

Direct Examination

By Mr. Grigsby:

My name is Zura Emmett Eagleston. When I first came to Alaska, I was sent up by the Seattle Star. I came up on the Coast [123] Guard Cutter, Samuel D. Ingraham; left Seattle on the 20th day August, 1939; arrived in Ketchikan on the 22nd of August. I stayed there until just before the holidays and returned to Seattle. I worked for the Star the rest of that winter. The next spring, they reorganized. I worked for the Star in regard to circulation, soliciting of advertisement, sending in feature articles or news as I could obtain it. I left Seattle the latter part of June and arrived in Alaska on June 27, 1940. I had one ten dollar

(Testimony of Z. E. Eagleston.)

bill when I arrived in Seward. That was my total worth in the world. I have lived here ever since. I arrived here with \$3.15, stopped at the Parsons Hotel; stayed there for a matter of a few days; was unable to do the business for the Star because they said the mail service was too slow, they couldn't get the news like they wanted it. And business conditions at that time—I became in debt. I even had to leave my bags with Mrs. Parsons after incurring—

Q. All right now, after that what employment did you engage in? What was your next employment?

A. On July 25 I started to work out at the Base. I worked out there from then until some time in September. I took sick with the flu. During that time they had had a little political trouble, or a little trouble out there, and they had changed the general superintendent, and a fellow—a consulting engineer was placed in charge, and in reorganizing I was placed around in another job—or I was going to be placed in another job. I took sick with the flu, come in and Dr. Howard Romig doctored me.

Q. What employment did you engage in at the Base?

A. I started in, for the two first days they put me on a pick and shovel—gravel pit. Then they put me over as a checking clerk, and from that to a material clerk.

(Testimony of Z. E. Eagleston.)

Q. All right, you didn't return to the Base to work after you were sick?

A. No, sir. When I got better I got in touch with [124] Mr. Corey trying to get my check. At that time I was—oh—between \$300 and \$400 in debt. I run behind on doctor bills and all and I got in touch with Mr. Corey and he told me he wished I would come back out, they had a place they could use me. I met Butler, who was acting as assistant superintendent, and he told me if I would come out in the carpenter division he would try to put me in as a foreman. However, I found myself so much in debt, I started in by collecting junk. My first experience was down where the freight depot now stands. It had been the city dump. I went over this pile and worked it over, gathered it up by the sackful; laid it under the observation of a building that was down there at—or some parties that were working down there at the time, and left it there; and then I would haul it up and——

Q. Did you gather it personally—with your own hands?

A. I gathered it hand by hand and filled it in gunny sacks. And then I went down and worked along what is now the government dock. They had a warehouse fire—the railroad had—and they had hauled it over and throwed it there. Amongst it was quite a bit of copper and brass and some lead. I went and gathered it up. One day while I was working there one of the watchmen came along

(Testimony of Z. E. Eagleston.)

and asked me if I had permission to work on the railroad property. I told him no, that I thought it was all right to just go ahead—it was junk and useless. And while he agreed with me, he suggested I go and see some official. That was the first time I ever met Colonel Ohlson. I judge this to be along sometime in October—latter part of October. And during the conversation with Colonel Ohlson he asked me if I would be interested in getting some copper wire. I told him I was always interested in anything that pertained to junk. So he told me that there had been a power line built from Sutton to Eska—a matter of a little over three miles. The Navy had built it after the last war. Their steam plant was up at Eska and they run this power down and had a washer [125] at Sutton and at Eska. It was for coal from the Chickaloon. I gathered all the junk I had and shipped it away at that time. I went up and took a look at this wire, phoned him and he told me to go ahead. This was a No. 4 wire. I would say it is approximately three-eighths of an inch in thickness. This fell down in some pieces—had been down for many years. I would take and lift it off the poles, knock the old poles down there they happened to be standing or leaning, get it off the poles, tear it up from the grass and roll it by hand by twisting it over my arm and getting it in piles. Then I conceived the idea of building sort of a windlass. I had cut it in various lengths and lay it in the various piles, and when the first snow would come along,

(Testimony of Z. E. Eagleston.)

just before Thanksgiving, I gathered this up and hauled it up by dog sled. That was my first experience in what they call mushing in Alaska. I ran across a native boy and he had three big dogs he hooked up to a sled and we would haul this out two or three hundred pounds at a time to the railroad. From there I shipped it down to Anchorage, estimated it, and then sent it to Seward and to Seattle, to the American Smelting and Refining Company. I think they still have my records.

Q. After that experience what business did you continue in for the next period?

A. I got through with that just before Christmas time, and then after Christmas I went back up to the Matanuska project, to Palmer. The co-op had some batteries—old radiators, some aluminum; also a fellow by the name of Graham had had a garage, and they had their old dump. I went out and worked that over, spent over a month's time—stopped there at the boarding house—gathering it up and shipping it. While I was there I noticed they had considerable stuff on hand that they formerly—in the project—they had shipped, such as electrical supplies and also some plumbing supplies. I bought several of those faucets— of which I have since thought of—and bought them at old [126] brass figures, I think a matter of three and a half, four cents, a pound, stuff that would be worth nearly that many dollars a pound now. I gathered this up, and among the rest they had three or four hundred old bronze window screens—new—that had

(Testimony of Z. E. Eagleston.)

been originally for Juneau and from Juneau they had been shipped to Fairbanks, and sent back down—rejected in each place. From there they had been sent back down to Palmer, he told me. I think I paid the sum of 20c apiece for them.

Q. Now, without going into too much detail, how long did you continue in the junk business?

A. I have been continuing, even to the present time.

Q. Well, before you went in any other business?

A. I continued that exclusively until approximately February 15, 1944.

Q. And then what did you do? That when you became connected with the Alta Club?

A. At that time I became connected with the Alta Club, and I—between the Alta Club and the junk business I have been engaged in both of them, taking care of the Alta Club and of the junk business since then. In that time I have bought the Anderson's Camp—

Q. Mr. Eagleston, you heard yesterday a number of witnesses testify that you were reputed to be a man of considerable wealth, and I believe two of the witnesses stated that you were reputed to be worth a quarter of a million dollars. Does that mortgage that you gave McGee on the 4th of November last include all your assets? Does that include all of your assets?

A. That includes practically everything I own except personal property such as clothing or something of that nature, yes sir.

(Testimony of Z. E. Eagleston.)

Q. Now, a large part of that property listed in that mortgage is personal property. I would like to have you take this—what would be your estimate, Mr. Eagleston, of the value of the security you have given in this mortgage, based on your familiarity with the different pieces of real estate, and of the chattels? [127] What is your estimate of the value of all—the total?

A. To me, or to a person—

Q. The market value, right today?

A. To sell it?

Q. Market value—real and personal property described in this mortgage—that is to sell it, of course?

A. Well, if it was put up and offered for sale today, and it was bid in at \$60,000, I would think that I got an awful good price out of it.

Q. Now, what is the value of the real property? I will first mention Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of Block 6—26-C of the sub-division of the South one-half of Block 26 of the East Addition of the City of Anchorage. Are there any houses on that property?

A. There is on 11. The first 10 you named was bought in a lot from Mrs. Barber. Mrs. Sonia—her name used to be Mrs. Barber. The purchase price was \$9000. I paid \$5000 cash and there was a mortgage for \$4000, but I have since sold Lot 1, 2 and 3 for \$3500 to Orville Hoyt—or to Orville Jordan. Selling this was because the mortgage of \$4000 still remained, plus interest, and McGee called

(Testimony of Z. E. Eagleston.)

my attention to it that he thought that was a fair price and that that mortgage should be paid off. So I paid that off by taking some other money—some cash—and paying with it.

Q. Now, Lot 11, Block 45; Is there a house on that?

A. Yes sir.

Q. What's that property worth?

A. Well, I would say that \$4000 would be a very good price for it; in fact, that it would be well sold.

Q. All and the whole of Lot 9, Block 47; Is there a house on that?

A. Yes sir.

Q. What is that property worth?

A. I paid \$1800 for it at the time I got it. At the time now—there is a hole dug in front of it—fixed the house up to live in. It is a place to do business on,—I would say around in the neighborhood of \$5000. [128]

Q. And Lot 8 in Block 4-D of the Third Addition to the City of Anchorage; Is there a house on that?

A. There are two houses on that.

Q. What is that property worth?

A. It was—\$7500 was paid for it.

Q. How long ago?

A. Sometime in '46—forepart of '46.

Q. Now what does this chattel property—

A. I might add I would like to get my \$7500 back out of that. I don't think I made a very smart deal.

(Testimony of Z. E. Eagleston.)

Q. That is all the real property you own?

A. No, I have another place out on 11th and East H Place.

Q. Is that not listed here?

A. That's the one where Mr. Miles lived in for over a year without paying me any rent.

Q. That is not listed here?

A. That was supposed to be listed here because he asked me for every piece of property I owned, and he informed me when we was making the loan—I asked for \$50,000—and he informed me the reason he was making the loan was—he didn't believe that the value was there, but that I had always kept my word and he had faith in my ability and thought that I would be able to repay it.

Q. All right now, we will get to the chattels. What do these chattels consist of, in a general way first?

A. Well, it is quite a collection.

Q. I will ask you, did you acquire the personal property in Anderson's Camp a year or two ago?

A. I bought it in October, 1945—the entire remains of Anderson's Camp.

Q. And where did you get that money.

A. I borrowed approximately \$17,000 from L. McGee—sixteen thousand seven or eight hundred.

Q. And did you give him any security besides your note?

A. I gave him a note only.

Q. And that's part of this property? Now, will you tell in a general way—

(Testimony of Z. E. Eagleston.)

A. Just a minute. I think in that there—[129] I had give him a mortgage at one time for \$7000, down where I live. That included the place—that's the one, Lot 11 in Block 45. That had considerable junk on it already for shipment at the time, and we figured the junk and stuff was around 2500, 3000 dollars worth—that and the car and all—and he gave me that. I mortgaged it for \$7000. The rest of the 17,000 that I got—11,000 and something—was secured only by note.

Q. All right, now, I want to get the value of these chattels. In a general way, what does this chattel property consist of, Mr. Eagleston, by lumping it into the way you acquired it? Is there some of Anderson's Camp stock left?

A. There is a large portion of it—the largest portion.

Q. Now, what other—describe some other aggregation of property. Is there a merry-go-round?

A. Going back: I had to purchase Anderson's Camp. I had bought some buildings that the Government had for sale that used to be the Engineers' building—most of them. Amongst them was some quonset huts. All but one I think, was sold—each on a small profit. Some of them I made as low as only \$25.00 on them. Others I made none to exceed \$100. I wish I had them now.

Q. I am getting at the property mortgaged here, Mr. Eagleston. I want to get your estimate of the value of it. Now, it consists of what you got left of Anderson's Camp, and what else does it consist of?

(Testimony of Z. E. Eagleston.)

A. Out of these houses I got there was some little plumbing. I had to store it. I bought this other and then got Anderson's Camp because I had in mind I would like to put in a small amusement park, and I bought this Anderson's Camp and the buildings and moved on there, and then I got a merry-go-round for which I paid \$1500, and it cost me over 1500 for freight getting it here. Then I got a loop-o-plane.

Q. What is that?

A. A loop-o-plane—it's a riding device [130] that consists of an upright with two arms to it. It has a basket on each arm that will hold four adults or six small people. And it turns——

Q. Is that for an amusement device?

A. Yes sir.

Q. The buildings referred to are the two buildings, each 20x120?

A. Were buildings moved over from near—purchased from the Government.

Q. Are those two buildings referred to 20 by 120?

A. That is right.

Q. And one Pacific Hut, 16 x 36—is that a quonset hut?

A. That is a Pacific Hut.

Q. And one large dwelling house?

A. That is the one that sets on Lot 11.

Q. Now,

“Together with 1 Merry-go-round; 1 Double Loop-O-Plane; and all lumber and building materials located on the above described prop-

(Testimony of Z. E. Eagleston.)

erty; together with all merchandise of every kind and description contained in those certain buildings above described, and any stock, fixtures or equipment that may be hereafter acquired by the mortgagor herein; and

“All buildings located on Lot 11 in Block 45, on Lot 9 in Block 47, and on Lot 8 in Block 4-D of the Third Addition”——

What are those buildings?

A. How is that?

Q. What are those buildings? “All buildings located on Lot 11 in Block 45, on Lot 9 in Block 47, and on Lot 8 in Block 4-D of the Third Addition, as above described?”

A. The one on Lot 11, Block 45, is where I live—where this altercation took place.

Q. Yes, and the one on Lot 8, Block 4-D of the Third Addition?

A. That is the one that sets at 11th and East H Place. I acquired that by loaning money to two different owners. [131]

Q. Now, will you place an estimate on the value of these chattels, all together, as they lay now?

A. Well, the first one I estimate at approximately \$5000, where I live.

Q. Now, I say the total of these chattels?

A. That will take me just a moment, Mr. Grigsby. 5000 and 5000 (writing). Does that include the one on Lot 11 of the East Addition—of Block 26-C? Perhaps, Mr. Grigsby, I can answer that this way——

(Testimony of Z. E. Eagleston.)

Q. The personal property listed there under the head of chattel—

The Court: It occurs to me that some of this property listed as personal property may be real property—a house attached to a lot.

Witness: Will probably be real property. I am asking Mr. Grigsby—

Mr. Grigsby: No, I believe this real property—listed as real property is real property and Mr. Eagleston doesn't own the buildings. He leased a piece of property to put them on; but look over your chattels—I think there is a complete list of chattels.

Witness: Please, your Honor, I think I can explain that in a way that could clear it up as to value. We have offered the entire eight lots, 1, 2 and 3, having been sold—we have offered 4 to 11, containing the said—

The Court: That is what block?

Witness: That is in Block 26-C.

The Court: Go ahead.

Witness: Including this black house, including the Pacific Hut, the two long buildings, the merry-go-round, the loop-o-plane, the contents from Anderson's Camp, what we purchased from the Post surplus property, or from the Surplus Property and Post Salvage Yard—in fact, lock, stock and barrel, we have offered it all for \$50,000, which would leave 2000 besides this mortgage. That would leave unmortgaged, or in the clear, the house at 11th and East H, which I value at \$5000, the one where

(Testimony of Z. E. Eagleston.)

I live, Lot 11 in Block 45 of the City of Anchorage, at another \$5000, would make \$10,000; and the one on Sixth Street, which is Lot 8, I believe, has a large and a small house on it, which I paid \$7500 for and overpaid. I value it at approximately 6000 to 6500. So that would make a total—leave me with a total of approximately 16,500, plus the 2000, or remaining part of 2000. In other words, at the present time, under a forced sale, I don't believe that I am worth over \$18,000, besides cash.

Mr Grigsby: At the time you made this mortgage did you endeavor to borrow money anywhere else than from McGee on this property.

A. Yes sir. The Bank of Alaska told me they didn't care to loan money out of town. I borrowed this here in November. I had been trying to borrow it before then. My trial was coming up—

Q. Just answer the question. We will get to that. And where else besides the Bank of Alaska?

A. I tried to borrow from the First National. I talked to Mr. Cuddy. He told be their limit was \$25,000 and that he wasn't interested in making a loan on my property at all.

Q. Now, will you describe what this you mentioned as surplus property consists of so the Court will know what it is?

A. Mr. Grigsby, when I mentioned Surplus Property—the name of the institution that handles it out there—I didn't intend to refer to anything I had as surplus property.

(Testimony of Z. E. Eagleston.)

Q. No, certainly not, but——

A. What we have out there we have what we term as salvage.

Q. Yes, yes, that is what I want you to explain.

A. That consists of various things. As an example: The last bunch we bought from the Post Salvage yard. It seems there is a [133] distinguishing difference. If anything is used by the Army and it is broken up, or seemingly beyond repair—couldn't be sold for to re-use in the condition it is in—it goes to the Post salvage yard. If it is usable again it goes to Surplus Property. Now, the last bunch that I bought was 52 some odd dollars worth——

Q. Is that salvage or surplus property?

A. That come from the Post salvage yard.

Q. Yes, all right. Now, will you tell the Court what that is? I don't know what it is. and the Court doesn't know. I want you to testify to what it is.

A. May I make a reference to a list that I have here? This is incomplete, but it's—well, there is various lots from 21-gallon alum tanks, battery jars, scrap steel; it says aircraft parts, huts listed in three different bunches, scrap steel and engine parts including gaskets, more scrap metal, scrap steel, safety belts, 39-gallon tanks and 10-gallon tanks—those are sort of rubberized—used. Here amongst the rest we have some cable, aluminum in boxes, engine stands, radio receiver, OD clothing, rags, parkas, Artic jackets, wool sox, pillows.

(Testimony of Z. E. Eagleston.)

Amongst the rest there are three things that are outstanding in my mind right now. One is 37,000 pounds of—they have here as Chloride lime, but the label says “chlorinated.” At the time we got them it was represented to me by a fellow that looked at it—says “That is chlorine lime” for which we purchased it, and I thought I might be able to dispose of it to the City to use in purifying the water. As soon as we found out it was chlorinated lime, that is an entirely different thing. That is in the powdered form. The other would have to be in liquid form. What I will do with this, or what I can use it for—I have got to work out a market for it.

Q. What about the rest of it?

A. Another thing, we have a bunch of 50-foot ladders we thought we could sell to the railroad yard but found they could not be transferred from one [134] government agency to another. The railroad could have got them for free if they had known about it. Then we have another, in the neighborhood of 300 to 350 feet long, a pile of scrap metal. This is estimated at 250 tons. Personally, I think there is more than that. That is aluminum, some copper, some brass, some manganese, iron. I have been told that some of them represented molybdenum. Amongst the rest I found some old radio parts throwed in that has a very light gold plate, very expensive at the time it was purchased, but I don't know that it will have value enough even to send it down and have the light gold plate taken off. I

(Testimony of Z. E. Eagleston.)

found two or three poles that were bronze that were used in radar equipment, but that will have to be stripped from its steel, iron and some other composite parts because they wouldn't pay for the shipping of it. Besides it has to be taken off to go into the furnace. In other words, this stuff will have to be all processed, which will require some expense, labor and supervision, and that is also governed by markets as to the proper time to ship that. I have some lead prepared and in barrels and this strike came on and now I don't know what the lead market is. I have gathered up batteries from practically every garage in town, and with these we have had the expense of labor for breaking them up and putting them in barrels. I have even got some old copper wire from the city in time past. I have got old aluminum from the airports and that caused me to believe that we can take and process it, and I still think it can be processed, but whoever does it will have to use some management and supervision, because the average laborer couldn't go in there—he wouldn't know just what it is. In this junk business, Mr. Grigsby, it requires some years experience and I have found out that even I, after the many years I have put into it, there is a lot of it that I don't know. [135]

Q. Did you offer for sale recently all this—what you term as “junk” in—

A. You mean the salvage yard? Yes sir. That constituted of the eight lots, all this stuff—you see, in Anderson's Camp we tore the building down

(Testimony of Z. E. Eagleston.)

and a lot of it was salvage material. A lot of the lumber, the better part, has been sold, for what we could get out of it. We lost a lot in taking it down, in taking the floor up. We have some of that flooring left. We have some lumber from a scrap lumber yard out at the Post salvage yard. We have various old metals and stuff.

Q. Now, Mr. Eagleston—

The Court: Pardon me. Did you mention molybdenum?

Witness: We have some there they tell me they have used that has molybdenum on it, and some is stainless steel.

The Court: The molybdenum is mixed with other metals?

Witness: Yes, and so is the stainless steel.

Mr. Grigsby: Did you endeavor to sell this recently?

A. Yes sir.

Q. What price did you put on it?

A. \$50,000.

Q. Were you able to get it?

A. No, we haven't been able to sell it yet.

Q. How much are you in on it yet, hauling and everything—purchase price?

A. We haven't finished hauling it all.

Q. How much have you in it at the present time?

A. I have at least 60 or 70 thousand dollars invested in that—

(Testimony of Z. E. Eagleston.)

Q. Now, what does the value of—

A. In taking and processing it and shipping it, and trying to get the merry-go-round and the other—you see, when we got the merry-go-round it wasn't as represented. We have to repair it. We have done some repair on it and the loop-o-plane, and we haven't been able to get electricity to run either one of them and so we have got no revenue back from them. [136]

Q. You said when you estimated the value of your property 21 or 22 thousand dollars is exclusive of cash. How much cash have you?

Court: \$18,000 he said.

Mr. Grigsby: Or 18,000. How much cash?

A. There is \$48,000—

Q. Just answer the question.

A. A little over 30,000.

Mr. Grigsby: I think that's all.

Cross-Examination

By Mr. Hellenthal:

Q. Do you have any other cash put away in Seattle? A. Not as much as one penny.

Q. Do you own the Alta Club? A. No, sir.

Q. What connection do you have with the Alta Club? A. I am there as a trustee.

Q. Oh, for nothing?

A. No, I get an income from it.

Q. How much did you pay for those refrigerators you bought from the Army—from the Surplus Property people?

(Testimony of Z. E. Eagleston.)

A. Paid a little 8,000 for them, and a little over 4,000 to get them here and get them set up.

Q. How much did you pay for that lumber you bought in the salvage yard?

A. That was put in in the bunch we bought. I think we spent out a total of seven or eight thousand for the entire lot. That can be verified from their records.

Q. I believe you ran an ad last week in the paper offering your property for \$50,000. Did you make some indirect mention of that ad when you said your property was offered for \$50,000?

A. Frankly, I didn't know that there was an ad run. I didn't run it. I have offered it for that. Mrs. Dunkel and Mr. Busey have asked me what I would take, and if there has been any ad run they have undoubtedly put it in.

Q. Wasn't that for the Savings Dollar Store alone?

A. No sir, that includes the entire property.

Q. And that said let no one come with less than \$50,000, or something to that effect, did it not?

A. I have never seen the ad. I didn't know there was even one put in.

Redirect Examination

By Mr. Grigsby:

Q. Mr. Eagleston, are you willing that a commission of appraisers be selected, appointed by the Court, to inspect and appraise all your property, real and personal? A. Yes sir.

(Testimony of Z. E. Eagleston.)

Recross-Examination

By Mr. Hellenthal:

Q. Mr. Eagleston, did I understand you to say that the property on which this—what you refer to as an argument, I believe—where this incident occurred, was worth \$5000?

A. I figure it at 5000, yes sir.

Q. Is that the property mentioned in an ad in the Anchorage Times on the 7th of December as full lot in business district with basement excavated for large building? Incidentally, is there a basement excavated? A. There is.

Q. Now, is that the lot mentioned in the Anchorage Times as “full lot in business district with basement excavated for large building. Dwelling house already on property?” There is a dwelling house on it? A. Yes, I dwell there.

Q. “First offer of \$11,000 takes it?”

A. How is that?

Q. “First offer of \$11,000 takes it?”

A. Well, to answer your question fully, I never knew there was such an ad put in, but I will certainly say he will get it for that. I don't know by whose authority it was put in.

Q. Now, does that evidently refer to your property—that ad? A. That I don't know.

Q. Now, Mr. Eagleston, on the 7th of December there was another ad I want to ask you about:

(Testimony of Z. E. Eagleston.)

“Flourishing business, strategically located, but don’t bother to inquire unless you have \$50,000. Blue 105 for appointment.” Does that refer to your Savings Dollar Store?

A. That I don’t know. I know nothing [138] about that ad. Perhaps by phoning—what is it, Blue 105?

Q. That is Mr. Busey’s phone. Do you know him?

A. I know Mr. Busey. If he told me he got me \$50,000 for that entire yard—

Q. What did you say about this other property?

A. I didn’t know we had ever mentioned that. In fact, I signed no listings with Mr. Busey whatever. I didn’t know he had it listed.

Q. Do you deposit the proceeds from the Alta Club every morning in the bank? A. No sir.

Q. What money have you been bringing to the bank recently, if any?

A. You mean for deposit?

Q. No, to exchange for bills, for instance?

A. I don’t know.

Q. What money is that?

A. I don’t understand your question.

Q. Have you been bringing large amounts of money to the First National Bank recently in the mornings and exchanging it for large bills, say \$500 and \$1,000 bills?

A. I haven’t received any \$500 or \$1,000 bills, but I have brought some money in there. This

(Testimony of Z. E. Eagleston.)

\$30,000 from my mortgage I brought in and got changed to other bills for convenience purposes. I might add to that, when I purchase from the Surplus Property or from the other, I deal in cash and I always take out large bills. When I bought the refrigerators it was done that same way.

Mr. Hellenthal: Nothing further.

Mr. Grigsby: That's all.

The Court: That is all, Mr. Eagleston. Is there any further testimony?

Mr. Grigsby: We rest.

The Court: Any rebuttal testimony?

Mr. Hellenthal: Nothing further. [139]

And thereupon, both sides having rested, the case was submitted to the Court, and thereafter, to-wit on the 20th day of December, 1946, the Court rendered its oral decision, finding for the plaintiff and against the defendant, and awarding actual and compensatory damages to the plaintiff in the sum of \$37,000.00.

And thereafter, on the 23rd day of December, 1946, the defendant filed his motion for a new trial, which was on the 27th day of December, 1946, denied by the Court, to which ruling defendant excepted and exception was allowed; and thereafter on said day the Court signed and filed its Findings of Fact, Conclusions of Law, and Judg-

ment to which defendant excepted and his exceptions were allowed, and which exceptions were as follows:

(Omitting title of case.)

To the Findings of Fact made and entered herein on the 27th day of December, 1946, the defendant excepts as follows:

To Finding of Fact No. I—on the ground there was insufficient evidence introduced on the trial on which to base said finding.

Defendant excepts to Finding of Fact No. II, on the ground that there was insufficient evidence introduced at the trial to support said finding.

Defendant excepts to Finding of Fact No. III, wherein the Court finds that plaintiff has suffered damage in the amount of Thirty-Seven Thousand Dollars (\$37,000.00), on the ground that there is insufficient evidence introduced at the trial of said action to support such finding, and on the ground that such finding was based partially upon improper evidence as detailed in paragraph IV of said Findings of Fact.

To the Conclusions of Law filed herein on the 27th day of December, 1946, defendant excepts on the ground that said Conclusions of Law wherein and whereby the Court found that plaintiff was entitled to judgment against the defendant in the sum of \$37,000.00, and certain interest are based on erroneous Findings of Fact not supported by the evidence in the case.

Defendant excepts to the judgment rendered herein on the 27th [140] day of December, 1946, wherein and whereby the plaintiff was awarded judgment against the defendant in the sum of Thirty-seven Thousand Dollars (\$37,000.00), with certain interest and costs on the ground that said judgment is excessive and not justified by the evidence introduced on the trial of said action.

GEORGE B. GRIGSBY,
Attorney for Defendant

The foregoing exceptions are hereby allowed this 13th day of March, 1947.

ANTHONY J. DIMOND,
District Judge

And thereafter on March 14th, 1947, the defendant was granted by the Court 60 days within which to serve, file and present his Bill of Exceptions on Appeal in said cause.

And thereafter on May 13th, 1947, served, filed and presented to the Court for settlement this his said Bill of Exceptions in said cause.

The complete transcript of the testimony and evidence given on the trial of the criminal case, entitled "United States of America vs. Z. E. Eagleston, is hereunto attached and made a part of this Bill of Exceptions.

For as much as the matters and things hereinabove set forth do not fully appear of record, the said defendant, Z. E. Eagleston, tenders and presents the foregoing as his Bill of Exceptions in

said cause and prays that the same be settled, allowed, signed and made a part of the record in said cause, pursuant to law in such cases.

Dated at Anchorage, Alaska, this 12th day of May, 1947.

/s/ GEORGE B. GRIGSBY,
Attorney for Defendant

Receipt is hereby acknowledged of copy of proposed Bill of Exceptions in the above entitled action.

May 12th, 1947.

/s/ JOHN S. HELLENTHAL,
Attorney for Plaintiff

In the District Court for the Territory of Alaska
Third Division

No. A-4239

FRANK ROWLEY,

Plaintiff,

vs.

Z. E. EAGLESTON,

Defendant.

ORDER SETTLING BILL OF EXCEPTIONS

The foregoing Bill of Exceptions having been filed and presented for settlement within the time allowed by law and the rules of Court, and having been examined by me and found to be a true and

accurate statement of all the evidence introduced and proceedings had in the trial of said cause in condensed and narrative form, except in instances where for a full understanding of the issues the proceeding and testimony has been set out verbatim and by question and answer, and said Bill of Exceptions having been found by me and agreed upon by counsel for plaintiff and defendant to be true and correct, it is, therefore,

Ordered, that said Bill of Exceptions be, and the same hereby is, approved and settled as a bill of exceptions upon the appeal of the defendant to the United States Circuit Court of Appeals for the Ninth Circuit, and it is further,

Ordered, that this order shall be deemed and taken as a certificate of the undersigned judge of this court who presided at the hearing of the said cause and before whom all the evidence in said cause was given, that the said Bill of Exceptions contains a condensed statement, in narrative form and by question and answer, of all evidence given in said cause upon which the Findings of Fact, Conclusions of Law, and Judgment of the Court are based.

Done by the Court and ordered entered this 23rd day of September, 1947.

/s/ ANTHONY J. DIMOND,
District Judge

[Endorsed]: Filed Sept. 23, 1947. [142]

[Title of District Court and Cause.]

SUPPLEMENTAL PRAECIPE FOR
TRANSCRIPT OF RECORD

To the Clerk of the District Court, Third Division
Alaska:

You are hereby requested to include in the transcript of record on appeal in the above entitled cause the following additional papers:

1. Minute Order, Oct. 20th, 1947, extending time to docket Record on Appeal.
2. Minute Order, Nov. 21st, 1947, extending time to docket Record on Appeal.
3. This supplemental praecipe.

/s/ GEORGE B. GRIGSBY,
Attorney for Defendant

Service admitted this 21st day of November,
1947.

/s/ JOHN S. HELLENTHAL,
Attorney for Plaintiff and
Appelle

By /s/ P. CHAMBERLIN

[Title of District Court and Cause.]

Minute Order, Oct. 20, 1947

EXTENDING TIME TO FILE AND DOCKET
CASE WITH CIRCUIT COURT OF AP-
PEALS

Now at this time on motion of George B. Grigsby,
counsel for defendant,

It is ordered that the defendant in cause No. A-4239, entitled Frank Rowley, plaintiff, versus Z. E. Eagleston, defendant, be, and he is hereby, granted an additional thirty days within which to file and docket case in Circuit Court of Appeals.

Entered Court Journal No. G-15, Page No. 181.
Oct. 20, 1947. [452]

[Title of District Court and Cause.]

Minute Order, Nov. 21, 1947

EXTENDING TIME

Now at this time upon motion of George B. Grigsby, counsel for defendant.

It is ordered that the defendant in cause No. A-4239, entitled Frank Rowley, plaintiff, versus Z. E. Eagleston, defendant, be, and he is hereby granted to and including December 5, 1947, to docket cause with Circuit Court of Appeals.

Entered Court Journal No. G-15, Page No. 278.
Nov. 21, 1947. [453]

[Title of District Court and Cause.]

COUNTER-PRAECIPE

To the Clerk of the District Court for the Territory of Alaska, Third Judicial Division:

You are hereby requested to make transcript of record in the above entitled action to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal taken in said cause, and to include in said transcript the following papers of record in said cause not heretofore requested transcribed by defendant in said cause:

1. Pages Numbered 534 to 540 inclusive, subtitled "Fracture of the Skull," of "A Textbook of Clinical Neurology, with an Introduction on the History of Neurology," by Israel S. Wechsler, M. D., Fifth Edition, Revised, 1944, W. B. Saunders Company—All filed in the records of the Court on January 14, 1947, and referred to by District Court in Findings of Fact and Conclusions of Law.

2. Order dated 29 October, 1947, re Exhibit 128 and Exhibits 100-113 inclusive and 114 to 123 inclusive.

3. This Counter-Praecipe.

/s/ JOHN S. HELLENTHAL,
Attorney for Plaintiff-
Appellee

Service admitted this 29th day of October, 1947.

/s/ GEORGE B. GRIGSBY,
Attorney for Defendant-
Appellant. [454]

“A Textbook of Clinical Neurology” with an Introduction to the History of Neurology, by Israel S. Wechsler, M.D., Fifth Edition, Revised, published by W. B. Saunders Company, Philadelphia and London, 1944.

Page 534—“Fracture of the Skull.

“Fracture of the skull is accompanied by loss of consciousness in more than 95 per cent of cases. If there is no tearing of the meninges, bleeding within the skull, or compression of the brain, the coma is not deep and consciousness is regained within a few minutes. If there is edema of the brain, with marked compression, particularly on the medulla, the coma is profound and may last hours or days. The pulse is slow, breathing is deep, stertorous or Cheyne-Stokes, the face is flushed, the extremities cold, the pupils at first contracted, later dilated, and fixed. The latter may be unequal, the dilated pupil generally being on the side of the cerebral injury. Should the cerebral compression increase, the patient may die within an hour or linger on for several days without regaining consciousness. He may come out of the coma for a time, then relapse and die of cerebral compression from hemorrhage or edema. The danger signs are deepening of the coma, loss of vesical and rectal control, rise of temperature, fall of blood pressure, and increase in respiratory and pulse rate. In the absence of infection, fever is, as a rule, absent.

“Generally, there is a hematoma over the site of the injury, and sooner or later echymoses about the

eyes, mastoid or back of the neck appear. The latter are often present in fracture of the base of the skull. In such cases, too, one or more of the cranial nerves may be paralyzed. Paralysis of the face is not uncommon if the fracture passes through the petrous pyramid. The cochlear nerve may also be affected and give rise to temporary or permanent deafness. The sixth nerve is not infrequently involved, resulting in internal strabismus and diplopia. Retinal hemorrhages are occasionally present. Fracture through the optic foramen may lead to unilateral optic atrophy and blindness. Fracture of the vault is generally unaccompanied by cranial nerve palsies. Should there be local hemorrhage or focal injury to the brain, irritative [455] signs appear in the form of jacksonian or generalized convulsions, followed by monoplegia or hemiplegia. The local signs and symptoms, such as aphasia, hemianopsia, sensory disturbances, ataxia, etc. (discussed under Focal Diagnosis), differ in no way from those caused by any other lesion. Occasionally there is papilledema, possibly more marked on the side of the injury.

“As the patient recovers consciousness he may vomit. During the gradual recovery there is still clouding of consciousness, and after this is regained there may be complete amnesia. Occasionally one observes delirium or a psychotic state, such as is seen in alcoholism or general paresis, lasting from a few hours to several days or even weeks. In the case of frontal lobe lesions, besides the possibility of psychotic manifestations, there may be moria or

Witzelsucht, apathy, and akinesia. Generally, the patient complains of severe headache, dizziness, and ringing in the ears. If a lumbar puncture is performed the fluid may come out under increased pressure and be mixed with blood in the case of hemorrhage into the subarachnoid space.

“Aside from the possibility of progressive meningeal hemorrhage, which will be discussed separately, infection carried in through the fractured skull may result in pyogenic meningitis (q.v.), in the formation of an epidural abscess or deep-seated abscess of the brain. Should ominous rigidity of the neck set in, the headaches be very severe, persistent, and localized, or stupor increase, the possibility of these complications must be thought of. But while all these complications may set in early they not infrequently occur weeks or even months after the injury. Traumatic encephalopathy may also be mentioned as a possibility. In many cases there is a proliferative gliosis secondary to the brain injury. Generally, the acute signs and symptoms recede, leaving behind residual manifestations.

“Besides the residual focal paralytic signs the patient often complains of persistent headache, pressure in the head, dizziness; noises in the ears, spots before the eyes, hypersensitiveness to light and sound, poverty [456] of memory, and general mental and physical fatigability. He may be drowsy or complain of insomnia. Glycosuria may follow fracture because of injury to the hypothalamic or interventricular regions (also the floor of the fourth ventricle). The pulse may be slow, the hands trem-

ulous, the reflexes hyperactive. The patient cannot concentrate his attention, and loses his energy; he feels the blood rushing to the head, suffers pain over the heart, is irritable, anxious, moody, or has outbreaks of anger. All or some of these manifestations may persist for a variable period of time; sometimes there are few or none. Pneumocephalus (accumulation of air within the cranial cavity) occasionally follows fracture through the sinuses or in other cases where the dura is ruptured. It is characterized essentially by headaches (signs of increased intracranial pressure) and sometimes by rhinorrhea.

“While it is difficult to establish a definite parallelism between the severity of the cerebral injury and the mental symptoms just enumerated, a great many patients who have sustained fractures of the skull show residual emotional and intellectual disturbances. Many have diminished capacity for work, as can be demonstrated by actual tests. Numerous investigators have studied under laboratory conditions the weakened “faculties” of soldiers who received head wounds during the war, and in many cases concluded that the defects could be fairly well correlated with the particular location of the brain injury. Thus, lengthened association time, easy mental fatigability, frequent errors, defective will or inhibition, and diminished power of attention were found in frontal lesions. Less marked but similar intellectual defects were also observed in temporoparietal injuries, while impaired ability in calculation was especially characteristic of occi-

pital lobe defects. Curiously, poverty of attention was found to be greater in occipital than frontal lobe lesions. In general, the higher psychic and intellectual functions were impaired to a greater extent in left-sided lesions of right-handed individuals; this was particularly true of frontal and parietal lobe injuries.

“In addition to the ‘nervous’ complaints, which are undoubtedly due [457] to organic brain changes, a number of hysterical symptoms may be engrafted. Desire for industrial or other compensation, the existence of personal conflicts for which the brain injury offers a compromise outlet, bad advice by lawyers or mismanagement by physicians are frequently the mainsprings of the psychogenic manifestations. Among these may be mentioned exaggerations of actual symptoms, unwillingness to cooperate, and resentfulness. Occasionally one observes hysterical paralyses and anesthasias, mutism, aphonia, stammering, tremors, twilight states, or attacks of unconsciousness, and even convulsions. Most of these symptoms generally appear some time following the injury, after a so-called “incubation period,” and are to be observed in 10 to 15 per cent of cases.

“Traumatic epilepsy occurs in a number of persons who have sustained fractures of the skull. The estimates range as high as 30 per cent. This is undoubtedly an exaggeration. Five to 10 per cent is nearer the truth, and then it depends on the nature of the injury. While the convulsions may become manifest soon after the injury, they generally set

in a few months or years later. The epileptic attacks are most apt to occur in injuries in or near the motor cortex, but may follow lesions anywhere in the brain. Nor need the original injury have been necessarily severe, although the more extensive the lesion, the more likely the traumatic epilepsy. The convulsions may be jacksonian or generalized; there may be only periodic fainting or merely petit mal attacks. Sensory jacksonian fits may occur in parietal lobe lesions. Twilight states, periodic alteration of character, fits of bad temper, or affective hyperirritability and other equivalents may represent some of the psychic epileptic manifestations. I have seen narcolepsy follow fracture of the base of the skull.

“Delayed apoplexy (*Spatapoplexie*) occasionally occurs after trauma to the head. The interval between the receipt of the injury and the acute cerebral hemorrhage is given as from six days to as many weeks. In most of the cases where the connection was established, cerebral vascular disease, namely, [458] arteriosclerosis, was also found, so that the trauma can be considered only as precipitating or exciting and not an ultimate cause.

“Late Complications.—Aside from the occurrence of the late complications, such as traumatic encephalitis, abscess, meningitis, and epilepsy, one may also mention cysts of the brain, arachnitis, and serous meningitis. The latter may occur weeks after trauma to the head and give rise to signs of increased intracranial pressure, especially stupor, coma, and papilledema. This really is a subdural

hydroma (see subdural hematoma). At operation one may find a large amount of serous or blackish serosanguineous fluid, with marked flattening of the brain. Evacuation of the fluid results in recovery.

“Diagnosis.—The diagnosis of fracture of the skull is not difficult. Prolonged unconsciousness, the presence of cerebral nerve palsies, depression at the point of injury, bleeding from the mouth, nose, or ears, and escape of cerebrospinal fluid are fairly strong evidence of fracture. (Bleeding from the orifices caused by local injury is generally slight and temporary.) But one may exist in the absence of all those signs. Conversely, meningeal hemorrhage alone may give rise to many of the symptoms of fracture, while the presence of blood in the cerebrospinal fluid obtained on lumbar puncture may be evidence of either. None the less, bloody cerebrospinal fluid following a blow to the skull is very significant of fracture. An X-ray examination of the skull, therefore, is always indicated and should never be omitted, if for no other than medico-legal purposes. But a fissured fracture may be present and not be demonstrable on the X-ray plate; it is advisable, therefore, to take stereoscopical pictures. Sometimes only necropsy reveals the presence of a fracture. The electroencephalogram may show evidence of an organic lesion of the brain in the case of fracture; improvement in the electroencephalographic tracings runs parallel with recovery.

“Prognosis.—The prognosis varies with the severity and location of the injury to the brain. Immediate or early death occurs in a great many cases.

The death rate is high in lesions in the neighborhood of the medulla and frontal lobes. Fracture through the frontal sinus may result in late meningitis. [459] Generally, fractures of the base are more dangerous than those of the vault. Depressed and comminuted fractures offer a worse prognosis than simple fissured ones. Compound fractures carry the possibility of infection and subsequent meningitis or abscess. Loss of deep reflexes, drop in blood pressure, and fixed, dilated pupils are of ominous significance. In general, fractures of the skull are not only immediately serious, but may leave behind grave and permanent sequels. A great many patients never recover at all. Complete recovery and return to former occupation or previous intellectual vigor is not at all rare. However, recovery may take months or even years, and no definite prognosis can be ventured before all possibility of the occurrence of late complications has passed. Permanent deafness, facial paralysis, ocular palsy, and even optic atrophy may remain after fracture of the skull.

“Treatment.—The treatment varies with the type of fracture of the skull and extent of injury to the brain. The first problem is to ameliorate the effect of compression and prevent infection. In simple fracture expectant treatment is the best. The patient is kept in bed, and, if necessary, sedatives (bromides and chloral) are administered. Morphine is generally held to be contraindicated, because it increases intracranial pressure; but it is a question whether there is increased pressure in all cases of

fracture. In compound, comminuted, and depressed fractures the wound is exposed and thoroughly cleaned, blood clots, bone splinters, and foreign bodies are removed, and if brain tissue is destroyed it, too, is removed. During the war neurosurgeons practiced wide exposure of compound fractures and thorough removal of all tissue likely to harbor infection—debridement. Most surgeons are of the opinion, and I think justly, that conservative treatment is best, and they defer all operative inference until absolutely necessary. The war, however, taught that radical treatment is preferable in all cases of compound fractures, and, unless the patient is in profound shock, operation may be immediately performed. Obviously, turning down an osteoplastic flap, removing blood clots, and ligating bleeding vessels are indicated in localizable meningeal hemorrhages. All operations, of course, must wait until shock is over and the patient's condition warrants surgery. In the case of late serous meningitis, or effusions of serosanguineous fluid, repeated lumbar puncture and, if necessary, cerebral decompression is indicated. This is also advisable in case of cerebral edema, although other methods for reducing intracranial pressure also are available. In general, fractures of the base are not accessible to operations and had better be left alone. Operation is naturally indicated when either an epidural or cerebral abscess is present or suspected.

“Spinal puncture is frequently employed both for determining increase in intracranial pressure and reducing it, and for detecting the presence of blood in the case of subarachnoid hemorrhage. Repeated

spinal puncture is not necessary. Some surgeons are of the opinion, erroneously, I believe, that lumbar puncture is contraindicated in compound fracture because of the possibility of facilitating infection of the meninges by the reduction of intracranial pressure. The latter can be accomplished effectively by the administration of hypertonic solutions of glucose, salt, or magnesium sulphate (see Tumors of the Brain). Hypertonic solutions are said to be contraindicated in case of shock and hypotension and where there is evidence of severe compression or cerebral contusion. Recent experiments even point to a rise after temporary reduction; hence suggest that lumbar tap is better. Sucrose may be better, as it does not cause a secondary rise. In view of the fact that meningitis may develop in a certain number of cases, the suggestion has been made that in addition to antitetanus serum antistreptococcus and antipneumococcus serum also be given. The last are no longer necessary, as chemotherapy is more effective; wherefore sulfadiazine or one of the other sulfonamides should be administered.

“The subsequent surgical treatment of late complications, especially of epilepsy, depends on the nature of the lesion. The work of Foerster and Penfield and others indicates its value in selected cases and particularly in those with focal convulsions. Removal of bone defects and meningeal or brain scars may be followed by cure. Sedative therapy should be kept up for a long time after operation. Obviously encephalography should precede operation and, if possible, electrical cortical stimulation for purposes of localization should be done

during it. Plastic operations for defects in the skull are occasionally [461] of value, but sometimes aggravate the existing condition. The medicinal treatment is purely symptomatic, and the management of residual paralysis differs in no way from those occurring in the course of vascular accidents (see Apoplexy). The headache and the numerous other "nervous" manifestations are frequently intractable. Lumbar air insufflation has been suggested for the chronic posttraumatic headache. The convulsions are treated in the same way as those occurring in "idiopathic" epilepsy, namely, with phenobarbital, dilantin, bromides, etc. Attempt should be made at reeducation, and psychotherapy employed in the hope that the patient may be restored to a fair degree of usefulness."

The foregoing seven and one-third pages of typewritten matter have been copied from pages 534 to 540, inclusive, of "A Textbook on Clinical Neurology," etc., by Israel S. Wechsler, M.D., Fifth Edition, Revised, published by W. B. Saunders Company, Philadelphia and London, 1944, and are a true copy of the original text of said work considered in arriving at the decision embodied in the Judgment in the case of Frank Rowley v. Z. E. Eagleston, cause No. A-4239 of the District Court for the Territory of Alaska, Third Division. No other part of said book was considered. The foregoing is the material referred to in the latter part of Paragraph IV of the Findings of Fact in said cause signed and entered on Dec. 27, 1946.

/s/ ANTHONY J. DIMOND,
District Judge. [462]

[Title of District Court and Cause.]

ORDER

Upon oral motion of John S. Hellenthal, attorney for defendant-appellee, and upon stipulation of the attorneys for the respective parties hereto, and subject to the obtaining of permission from the United States Circuit Court of Appeals, Ninth Circuit, and for good cause shown, particularly because Exhibit No. 128 is not of a printable type.

It Is Hereby Ordered, Adjudged and Decreed:

That plaintiff-appellee's Exhibit No. 128 be forwarded with the transcript of record in this cause to the Clerk of the United States Circuit Court of Appeals, Ninth Circuit, San Francisco, California.

That plaintiff-appellee's photographic and X-ray exhibits, namely Exhibits Nos. 100 to 113, inclusive, and Exhibits Nos. 114 to 123, inclusive, be likewise forwarded to the Ninth Circuit Court of Appeals.

Dated at Anchorage, Alaska, this 29th day of October, 1947.

/s/ ANTHONY J. DIMOND,
District Judge.

I agree to the above proposed order this 29th day of October, 1947.

/s/ GEORGE B. GRIGSBY,
Attorney for
Defendant-Appellant.

[Endorsed]: Filed Oct. 29, 1947. [463]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD

United States of America,
Territory of Alaska,
Third Division—ss.

I, M. E. S. Brunelle, Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the foregoing and hereto annexed 464 pages, numbered from 1 to 464, inclusive, are a full, true and correct transcript of the records and files of the proceedings in the above entitled cause as the same appears on the records and files in my office; that this transcript is made in accordance with the Praecipe for Transcript of Record filed in my office on the 1st day of October, 1947; the Counter Praecipe filed in my office on the 29th day of October, 1947; and the Supplemental Praecipe for Transcript of Record filed in my office on the 21st day of November, 1947; that the foregoing transcript has been prepared, examined and certified to by me, and that the costs thereof, amounting to \$77.15, has been paid to me by George B. Grigsby, counsel for the appellant herein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 28th day of November, 1947.

[Seal] /s/ M. E. S. BRUNELLE,
Clerk of the District Court, Territory of Alaska,
Third Division. [464]

[Endorsed] No. 11807. United States Circuit Court of Appeals for the Ninth Circuit. Z. E. Eagleston, Appellant, vs. Frank Rowley, Appellee. Transcript of Record. Upon Appeal from the District Court for the Territory of Alaska, Third Division.

Filed December 3, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11807

Z. E. EAGLESTON,

Appellant,

vs.

FRANK ROWLEY,

Appellee.

ORDER DISPENSING WITH THE
REPRODUCTION OF EXHIBITS

This matter coming on upon the application and stipulation of the parties to the above entitled ac-

tion, by their respective attorneys, and good cause appearing, therefore:

It Is Ordered:

That, certain exhibits heretofore introduced in evidence on the trial of the above entitled action and now in the possession of the Clerk of this court, may be considered on the hearing of this appeal in their original form and without reproduction. The exhibits above referred to are Exhibit 128, being certain mortality tables, and Exhibits 100 to 113, inclusive, and Exhibits 114 to 123, inclusive, all the foregoing being photographs and X-ray photographs and pictures.

Dated December 31, 1947.

/s/ FRANCIS A. GARRECHT,
Senior United States
Circuit Judge.

[Title of Circuit Court of Appeals and Cause.]

ADOPTION OF ASSIGNMENTS OF ERROR
AS POINTS ON APPEAL AND DESIGNA-
TION OF PARTS OF RECORD TO BE
PRINTED

To the Clerk of the United States Circuit Court of
Appeals for the Ninth Circuit:

Please be informed that the appellant in the
above entitled action hereby adopts as points on
which he intends to rely, the Assignments of Error
appearing in the Transcript of Record.

Appellant designates for printing the entire
Transcript of Record, except that part of the Bill
of Exceptions consisting of the Transcript of Pro-
ceedings in the case entitled United States of
America vs. Z. E. Eagleston, Defendant, No. 1986,
which said Transcript of Proceedings is attached
to and made part of said Bill of Exceptions.

/s/ GEORGE B. GRIGSBY,
Attorney for Appellant.

Service accepted this 9th day of December, 1947.

/s/ JOHN HELLENTHAL,
Attorney for Appellee.

[Title of Circuit Court of Appeals and Cause.]

ORDER WITH REFERENCE TO PRINTING
TRANSCRIPT

Good cause appearing therefore,
It Is Hereby Ordered:

That, in printing the Transcript of Record in the above entitled action the printing of that part of the Bill of Exceptions consisting of the Transcript of Proceedings in the case entitled, "United States of America, Plaintiff, v. Z. E. Eagleston, Defendant, No. 1986, Criminal," be dispensed with and that in lieu thereof the printed Transcript of Record in Case No. 11545, entitled, "Z. E. Eagleston, Appellant, v. United States of America, Appellee," be used and considered by this court on the hearing of the appeal.

/s/ FRANCIS A. GARRECHT,
Senior United States
Circuit Judge.

Dated December 22, 1947.

[Endorsed]: Filed Dec. 23, 1947.